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EDITORIAL

Sovereignty Conflicts

Most social unrest and international conflicts are a result of sovereignty issues. When a state is not sufficiently democratic to accept that national sovereignty ultimately lies with the people, its inability to meet the needs of its citizens gives rise to insurgency movements and revolts calling for autonomy or independence.

In Europe, examples can be found in Scotland, the Basque Country, Catalonia, Corsica, Northern Ireland, Northern Italy, the Shetland Islands, Brittany, Flanders, Sardinia, Sicily, Alsace and Cyprus, among others. Further afield one can point to the cases of Palestine, Tibet, Kurdistan, Mali, Afghanistan, Sudan, Somalia and Somaliland, the Western Sahara, Rwanda and Burundi, the islands disputed over by Japan, Russia and China, Quebec, the indigenous peoples of Chile and other countries in the Americas, ethnic minorities in China, New Caledonia, Taiwan, the Maldives, the Falklands, Siachen and Kashmir. In some cases, such as those of Quebec and Scotland, the state recognizes the democratic right to self-determination. In others, such as Spain, sovereignty claims by the people are limited by law.

At another level, sovereignty conflicts can also arise from the failure to recognize immigrants' right to vote. This is the case in India, Russia, Angola, South Africa, Ecuador, Algeria, Canada, Mexico and many other countries. They may also arise because of fishing rights or restrictions, access to fertile land (land grabbing), access to water resources (water grabbing), occupation of land by logging and mining companies (e.g. in the Amazon), peasants occupying land to cultivate, or shantytowns and slums (poor populations), as happens in Latin America.

Similarly, the Arab 'springs' might also be considered conflicts of sovereignty, due to the lack of democratic systems giving the majority of the population access to legislative and governmental action.

Sovereignty conflicts cannot be solved by law or armed force: reality has shown us otherwise. Instead, the search for effective solutions requires an analysis of the conflict and comprehensive citizen diplomacy.

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ARTICLE

Legalizing Secession: The Catalan Case

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Abstract

In this article we review the main theories of secession from a normative point of view, relating them to the debate on the constitutionalization of secession and the Catalan case in particular. Our conclusion is that secession conflicts are complex because several issues related to justice and democracy are involved. For the Catalan case, we defend the idea of adopting a constitutional or (quasi-)constitutional approach as a peaceful and reasonable way to handle the secessionist debate. This would take into account what authors such as Norman or Sunstein have suggested in their analyses. Liberal democracies are able to consider secession as a way of solving territorial disputes, which need to be approached from a pragmatic and reasonable point of view.

1. INTRODUCTION: A REASONABLE APPROACH TO SECESSION

In his book *Return to Reason* (2003), Stephen Toulmin described two ways of using human reason. The first is rationality, based on theory and universal certainties, inspired by a mathematical way of thinking. The other is reasonableness, based on personal experience and practice, rooted in what we call "common sense". The first way is that of Descartes, the second of Montaigne. While Toulmin acknowledges the enormous power of rationality, particularly in the field of science and its technological applications, he is also concerned with the importance of reason in the realm of human affairs. He is skeptical about the relevance and success of attempts to establish overarching theoretical systems to explain what, or what should, happen, in human affairs. Toulmin rejects the idea that the challenges of our unpredictable societies can be confronted only from inflexible and abstract theoretical positions; instead, he argues for the need to handle this task with a down-to-earth reasoned way of thinking, which could take into account the unavoidable complexity of human societies.

However, when confronting the problems of secession processes and how they should be handled, most scholars have adopted a stance that is much more rational than reasonable. What we aim to show in this article is that most political philosophers, in trying to find out who is right in secessionist processes, have produced normative theories, which, though interesting, are seriously challenged by reality. Secession processes are the result of complex historical dynamics which are quite difficult to confront from the point of view of abstract principles
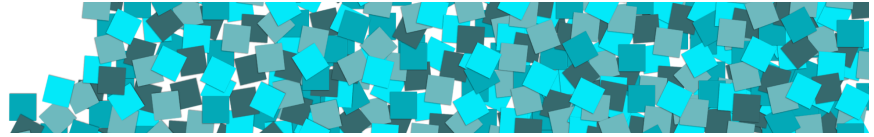
attempting to determine who has a "right" to secede.[1] Instead, taking into account that secession processes may lead to instability and, more often than not, violence, we think that the relevant question is the following: is it possible to regulate secession processes in a way that could make them peaceful?

This article is by no means an attempt to give a definitive answer to this question, for this would obviously require going into greater depth. Here, we first review the existing literature in the light of this question, even that which was not designed to answer it. As we will see, there are two major ways of confronting secession from a normative point of view: by discussing (1) a universal (normally unilateral) right of secession; and (2) a constitutional (normally negotiated) right of secession. We explore both approaches, trying to identify their advantages and problems in terms of establishing regulations geared towards peaceful secession processes. Then we take a reasoned, peacefulness-oriented normative look at an emerging secessionist process within the Western democratic world: the Catalan case,[2] not to find a solution, but to test the integrity of the theoretical approaches we first described. With this brief look at the proposals for a concrete case, we hope to make a significant contribution in the progress towards an answer to the question framed in this article.

2. THEORIES OF SECESSION AND THEIR SHORTCOMINGS

Moral theories

Regulating secession needs a moral basis. The development of theories on secession is something relatively new in political theory; the early 1990s saw a wave of literature on this topic generated in parallel with the emergence of new states. We should remember that there were no more than fifty states in the world at the beginning of the 20th century, but almost two hundred at the end (Coggins, 2011). Moreover, nowadays there are secessionist movements (with more or less force) in almost all liberal democracies. So, although secession has been neglected in political theory, it is important to consider its relevance in the real world.

The classic distinction in moral theories is between Primary and Remedial Right approaches (Moore, 1998). Primary Right theories consider secession a fundamental right of certain groups or even individuals, ruling out any requirement to justify it. On one hand, adscriptivist theories

(also called nationalist theories) limit the right to cultural or national groups (Tamir, 1993; Margalit and Raz, 1990; Miller, 1993). These theories usually present arguments related to preservation of cultural and national values, and correlate self-determination with the right to secede from the parent state. Despite the popularity of the nationalist position among secessionist movements, the idea of equating nations with states is not defended by many scholars due to the shortcomings that we will mention later. On the other hand, associative or plebiscitary theories derive the right to secession purely from democratic principles without previously constraining the relevant subject bearer of this right (Beran, 1984; Gauthier, 1998).[3] In this case, the priority is to satisfy basic rights such as individual autonomy or the expression of democratic demands. Political authority is inevitably linked to the consent of a population. If the parent state loses the consent of a territorialized minority, that population has the right to secede, independently of its characteristics. Obviously, the authors defending this position include the need to consider the viability of the would-be state.

Remedial Theory however, instead of examining the priority of certain principles or the characteristics of the seceding subject, considers a set of "just causes" that justify secession under certain conditions. The most popular theory in this category claims that violation of individual rights, unjust annexation and unfair redistribution are in themselves strong enough reasons to justify secession. Depending on the author's considerations, the list of relevant grievances varies. Nonetheless, what is clear is that the legitimacy of the state in this case is teleological: the state is a legitimate authority if it serves to protect, usually individual, rights.

Three relevant questions: who, why and how

The moral theories of secession normally answer three different questions which are, as we have seen in the previous section, interconnected. First, *who*: the subject involved in secessionist disputes is often the object of controversy, with some considering individuals as the only bearers of the right to secede while others refer to group or national rights. Second, *why*: the reasons for secession are relevant for just-cause defenders but virtually irrelevant for those supporting Primary Right theories. Finally, the *how*: supporters of plebiscitarian theories are concerned about procedures, but they are not considered by other theories or at least not as a crucial element.

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1   We do not deny the importance of moral theories of secession but wish to point out the necessity of applying them to reality in case-by-case analyses. These theories are, usually, good instruments for evaluating the reasonableness of certain claims from different moral points of view, and their institutional solutions.

2   Our proposal will be limited to general guidelines derived from what we know in terms of institutionalization and moral theories of secession.

3   For a discussion of the democratic principle in theory and international order see: López-Bofill (2009).
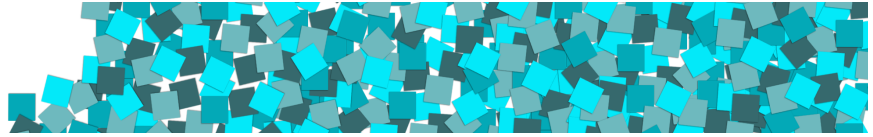
In general we can say that each theory has advantages and shortcomings. Adscriptivist theories focus their attention on national culture which is empirically the fuel for secessionist aspirations. However, we know that national cultures are dynamic and controversial, that citizens of minority nations normally have shared identities and the borders of these identities are usually not clear. In some contexts, applying the principle of national self-determination for solving secessionist disputes does not seem to be wise or even possible since the dispute is precisely over the national identity or the existence of a national subject. As their major criterion, Plebiscitarian or associative theories are sensitive to the democratic will of the citizens. Nevertheless, this theory has several shortcomings, since the political unit that would vote on secession is not clearly defined. A current criticism against the theory refers to the potential fostering of instability, given that the political unit would only be defined *after* the vote on breaking up with the parent state.

Triple justifications, hybrid theories and cultural liberalism

Brief reflection on the three main theories of secession is enough to see that each theory has major shortcomings and none solves the complexity of secessionist disputes. Should we consider a majority secessionist claim illegitimate in the absence of severe grievances? Are territorial groups entitled to secede though they lack a national culture? Is there a limit to recursive secessions even if they are legitimately following democratic procedures? In recent theories of secession there is a certain flexibility and permeability between categories that has lead to hybrid approaches and major changes in the positions of the authors. Focusing on the debate in liberal democratic contexts (such as Catalonia, Scotland and Quebec) we can already see this tendency in older theories.
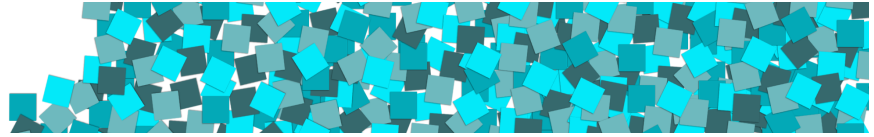
New theories apply several criteria to plurinational democracies, and the debate on minorities is evolving in parallel with that on secession. In the fourth stage of the debate (Kymlicka, 2001) ethnocultural justice, national recognition and accommodation of minorities become part of the legitimacy of the state. As Tierney has pointed out "debates over constitutional accommodation of sub-state nations should not be characterized, as they often have been, as struggles between liberal democratic, 'civic nationalist' host states on one hand, and communitarian, 'ethnic nationalist' sub-state national societies on the other; in fact, both sides to these disputes derive their ideological framework from liberalism" (Tierney, 2004: 9). With this perspective, some authors have reformulated remedial theories, taking into account ethnocultural justice and minority self-government as crucial elements of state legitimacy

and including them in the list of just grievances legitimizing secessionism. Two examples are Seymour (2007), who includes a Primary Right to self-determination within the parent state, and Patten (2002), who establishes lack of recognition as grounds for secession in the case of minority nations. Both mix democratic requirements and ascriptive reasons linked to Primary Right theories with a remedial approach, treating secession as a last-resort solution to territorial conflicts. Older theories of secession have also evolved to include new elements. An example is the comparison between Allen Buchanan's first formulation of a remedial theory, published in 1991, and the prologue to the 2013 Spanish edition, 21 years later, in which Buchanan comments on the Catalan secessionist demands. While the restrictive 1991 theory defended secession as a very exceptional measure, the new edition is more flexible, seeing the unfair territorial distribution of tax revenue in the *Estado de las Autonomías* and the breaching of agreements between central government and autonomous regions as just causes, or at least, as things that should be taken into account when evaluating secession claims.

To sum up, in present-day plurinational, liberal democratic contexts, few authors defend a single-dimension approach to secessionist disputes. The plurality of legitimating discourses and interests, the complexity of the notions of justice and democratic legitimacy and the existence of competing visions of liberal legitimacy make it impossible. As mentioned earlier, beyond certain guidelines provided by moral theories, a case-by-case analysis is necessary. In addition, we consider that an institutional approach should be adopted to integrate general principles into the constitutional framework of the parent state (See section 3).

3. CONSTITUTIONALIZING SECESSION

So far, we have presented a summary of the academic normative debate on the right of secession, but it should be noted that general theories on the right of secession usually refer, implicitly or explicitly, to a *unilateral* right of secession. This tends to greatly favor one side of a secessionist conflict in those peaceful countries which aim to protect basic human rights, particularly in the case of liberal democracies: Primary Right theories (either adscriptivist or plebiscitarian) tend to favor secessionists, while remedial theories tend to favor states, with the burden of proof falling on the secessionists. Given these observations, it seems unlikely that either theory would be widely accepted by both sides in a secessionist conflict taking place in a peaceful and civilized country. Some scholars have defended the idea of constitutionalizing the right of secession to overcome the problems of a unilateral right to secede and pro-

vide a framework for peaceful development and resolution of secessionist conflicts. Others, however, argue against this idea, saying it would create more problems than it would solve. We will now examine this debate, to see to what extent a constitutional right of secession could provide a peaceful-oriented framework for secessionist conflicts.

Main theories developed within the debate

When trying to link the theorists in this debate to the three main theories of secession described (adscriptivist, plebiscitarian and remedial), we found that none followed the tenets of adscriptivism. In contrast, there are those who clearly link their theory on constitutional right of secession to a remedial theory, either to prove or discard it. Others analyze this subject within a plebiscitarian framework. And finally, there are scholars who do not evaluate the constitutional right of secession for its compliance with an ideal theory, but for its practical use as an institutional mechanism designed to minimize the potential dangers they see as linked to secessionist politics. For the sake of simplicity, although not entirely accurate, we label this latter approach as *pragmatism*. Another division between the authors analyzed here is that some of them are in agreement with a constitutional right of secession, others not, and some simply consider that it depends on the case. We labeled them as "positive", "negative" and "case-by-case" groups of theories. The following table shows authors in relation to the approaches.

Figure 1: Theories on constitutional right of secession

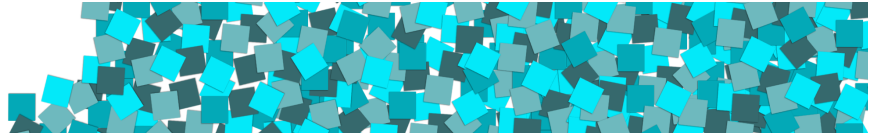|	Positive	Negative	Case-by-case
Remedialism	Wayne Norman (1st)	Cass Sunstein[4]	Allen Buchanan
Plebiscitarianism	Mark E. Brandon	Andrei Kreptul	Daniel Philpott
Pragmatism	Wayne Norman (2nd)[5] Daniel Weinstock Miodrag Jovanovic	Hilliard Aronovitch	

Source: own elaboration

In the following detailed description of these combinations, we consider, for those authors involved in the debate on constitutionalized secession, their stance (or lack of) in the general debate on the right of secession.

- *Remedialism*: Some remedialists (Norman, 1998) argue for a constitutional right of secession, mainly because they see a qualified constitutional right of secession as a proxy for just-cause secessions. Determining who has a just cause for secession is a task that requires an arbitrator, but one who is not biased towards one side or another. A feasible solution could be to establish a procedural constitutional right of secession with major democratic hurdles (e.g. qualified majorities in a referendum on secession), which only groups with very good (just) reasons would be able to overcome. However, other remedialist authors (Sunstein, 1991) state that, if secession is regarded as a remedial right, then its place is strictly in the realm of moral principles, not of legal rights. They regard secession as similar to revolution or civil disobedience: a form of resistance that can only be legitimized when it is exercised against a deeply unjust authority. But it makes no sense to "legalize" them as forms of resistance. Finally, there are also remedialists for whom there is no general answer to whether a constitutional right of secession should be introduced for the sake of remedialist guidelines. For them, it depends entirely on the context. A constitutional right of secession is only one of a number of tools to be used to face the problem of unjustly treated minorities. Sometimes it will be the best tool, sometimes not. Buchanan, in his earlier publications, was a clear supporter of this point of view (1991: 127-149).

- *Plebiscitarianism*: Some plebiscitarians see constitutionalism and secession as two sides of the same coin: the idea that governments should serve the will of the people, the reverse. Mark E. Brandon argues that at the heart of constitutionalism lies the idea that governments are human creations and that any assumption of perpetuity of political communities is "wrong in principle" (2003: 274). Andrei Kreptul (2003) is far more skeptical. A libertarian, Kreptul applies this approach, strongly anti-statist, to secession, stating that secession is an individual right: only individuals have the right to decide to which political community they and their properties should belong. Kreptul's mistrust of the state, however, leads him to discourage any attempt to constitutionalize secession, for it would probably become an attempt to domesticate secessionism, rather than protect the individual, plebiscitarian right of secession he wants to promote. Finally, Daniel Philpott (1998), one of the first proponents of a plebiscitarian approach to secession, considers that the value of

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4 It proved difficult to place Sunstein in a category. His strongest reasons for opposing a constitutional right of secession are largely pragmatic. However, his argument, in general terms, is clearly based on concerns about legitimacy, in a remedialist fashion. What differentiates him from Buchanan is that, while agreeing with remedialism, Sunstein rejects constitutionalization of secession, even where there is just cause.

5 Wayne Norman appears twice because we observed a shift from an initial remedialist approach towards a more pragmatic one. In 1998, the main reason to accept a (qualified, that is quite difficult to achieve) constitutional right of secession, was its instrumental potential as a proxy to just-cause secession. Norman later became doubtful of its soundness, and focused more on the defense of a constitutionalized right of secession as part of a *modus vivendi* between rival nation-building projects within a single state.

a constitutional right of secession must be evaluated case by case, as it highly depends on the context.

- *Pragmatism*: Pragmatic theorists do not formulate their views on a constitutional right of secession as an extension of any ideal theory of secession, but as a way to handle secessionist conflicts and their (especially negative) consequences in practice. Daniel Weinstock (2001), for instance, states that it is reasonable to legalize a morally problematic practice when it: 1) is inevitable; 2) does not violate any absolute moral principle; and 3) the consequences of forbidding or not regulating the practice are worse than those of legalizing and therefore regulating it. Weinstock considers that secession matches the two first criteria, and that constitutionalizing a right to secede matches the third, allowing governments to set a reasonably high threshold to make it quite difficult to engage in the legal process but not confine secessionists to a juridical impossibility they would be unlikely to accept. Norman (2006) and Jovanovic (2007) share similar views but, though based on the same pragmatic approach, Hiliard Aronovitch (2006) argues that there may be or not be good reasons to defend a right of secession. He states that a constitutional right of secession will always have weak points which would be hard to overcome: futility, risk of misuse, weakening of both the unity of the plural states and of the diversity of their constituent units, over-commitment with legal rights, less flexibility.

In this article, we are closer to the pragmatic point of view. We are not as interested in discussions on legitimacy or sovereignty, as we consider it very difficult to promote consensus between the two sides of current secessionist processes, but rather in determining how to handle these processes in the most peaceful and reasonable way. To see if a constitutional right of secession promotes those pragmatic goals (as in Weinstock) or hampers them (as in Aronovitch), we think it is useful to study the only case of a well-established liberal democracy recognizing a (quasi-) constitutional right of secession: Canada. It is well-known that, after two referendums on sovereignty, held against the background of the disagreement between Quebec City and Ottawa over Quebec's right of secession, the Canadian federal government asked the Supreme Court whether Quebec had a right of secession under constitutional or international law.[6] The ruling, pronounced in 1998, was that while Quebec did not have the right of unilateral secession, compliance with the underlying democratic, liberal, constitutional and federalist principles would nevertheless force Ottawa to take into account a majority "yes" in a ref-

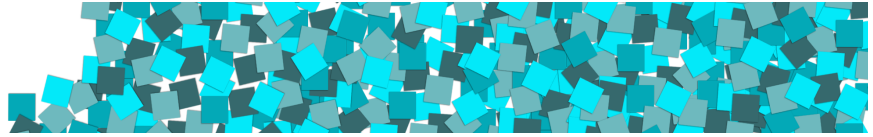erendum with a clear question on Quebec's independence, and negotiate with the secessionists.

The great virtue of this ruling was that it built consensus on the legitimate aspirations of both sides by providing them with a mechanism to peacefully battle for or against independence (Young, 1999), while denying the legitimacy of unilateral action on this issue. However, the solution comes with problems of its own. What happens if negotiations fail? Who determines what a clear majority is? And others. These problems are recognized in the Supreme Court's ruling, but we believe that having a practical, reasoned solution for problems is far better than having none at all. This is especially the case when taking into account the certain prominence of the violent, extreme left-wing branch of the Front de Libération du Québec (FLQ) in the early days of the modern Quebec liberation movement. We cannot establish a direct causal relation without deeper analysis, but we think it is reasonable to assume that the rise of a moderate, peaceful and democratic secessionism organized around the Parti Québécois, and the credible democratic and peaceful channels through which it could fight for its goals, were major contributions in preventing the FLQ taking over Quebec's secessionist movement. In our view, the 1998 Supreme Court ruling was a step forward in providing secessionism with channels to credibly push for its demands without harming the reasonably peaceful, stable and democratic environment provided by the constitutional order.

4. THE CATALAN CASE

We have observed that the main normative theoretical approaches to secession focus on a general discussion of the right of secession (normally understood as unilateral) or on the constitutional right of secession. All these theoretical tools can be used to confront a specific, recent case of growing secessionist conflict within a peaceful and democratic society: Catalonia, within Spain. With social support for Catalan independence having grown gradually for at least ten years, most opinion surveys show that, in the past two years, a majority of the population backs the claim. This is a relatively sudden shift away from traditional Catalan nationalism, whose mainstream supporters have always been in favor of an accommodation of its demands within the framework of a pluri-national, highly decentralized Spanish state.

A good description of this shift and its likely causes is given by Requejo and Sanjaume (2013) and Guinjoan, Rodon, Sanjaume (2013). However, to form an idea of the environment in which this rise of Catalan secessionism

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6 See: "Reference re Secession of Quebec", [1998] 2 S.C.R. 217 available on [http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1643/index.do]
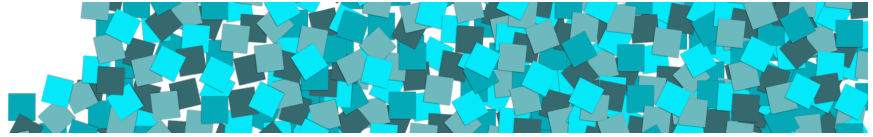
has developed, without going into details on the history of Catalan nationalism, we mention five important events: (1) the reform of Catalonia's autonomous constitution (*Estatut d'Autonomia*) between 2004 and 2006, which was completely insufficient for some defenders of Catalan nationalism; (2) the 2010 ruling by the Spanish Constitutional Court, on the lawsuit the conservative People's Party filed against the *Estatut*, seen by most Catalan nationalists as an unacceptable curtailment of an already insufficient autonomy; (3) the economic crisis, which hit at a time when a majority of Catalans were convinced that Catalonia was suffering from discriminatory redistribution of revenue by Spanish governments, left or right-wing; (4) the massive demonstration in Barcelona on September 11, 2012, demanding Catalonia become "the next state of Europe"; and (5) the subsequent regional elections in Catalonia, which resulted in a Parliament with a majority of seats in the hands of pro-sovereignty[7] parties, growth of the most explicitly secessionist parties, and an agreement on parliamentary stability between the right-wing, pro-sovereignty Convergència i Unió and the left-wing, secessionist Esquerra Republicana de Catalunya parties. The deal included a commitment to hold a referendum on independence before the end of 2014.

The Catalan secessionist process being developed is based on this agreement. Supporters defend it as completely legitimate for various reasons, but mostly on the grounds of popular support. However, critics of the process present it as a deliberate attempt to break Spanish constitutional order, and therefore as a threat towards democracy. How to react to this? In our view, before discussing the convenience of constitutionalizing a right of secession, we should first look at the issue from the point of view of the theories on (unilateral) right of secession we have so far discussed.

a) *Ascriptivism*: Catalan nationalism has usually justified its demands by rooting them in the distinct cultural identity of Catalonia, especially in linguistic terms. This, however, is not so usual in the current secessionist discourse, much more focused on plebiscitarian and economy-oriented remedial reasons, as we make clear below. Nevertheless, it does play a role; for instance, in the original draft of the *Estatut d'Autonomia* approved by the Catalan parliament in 2005, Catalonia was defined as "a nation" with "historical rights". This idea has consistently been repeated in some of the largest demonstrations for the *right to decide* (which usually includes the right of secession), such as the march in 2010 against the Spanish Constitutional Court's ruling on parts of the Statute,

under the slogan "*We're a nation. We decide*". However, those contesting the idea of Catalonia having a right of secession, normally affirm that the "nation" is Spain as a whole, and that Catalonia is simply a region within it. This is the stance of Ciutadans and the People's Party, the only two parties in the Catalan parliament which are completely against a call for a referendum on independence.

b) *Plebiscitarianism*: the most frequently used line of reasoning in favor of Catalan secession, or at least for a referendum on independence, is based on the implicit affirmation that, simply stated, a majority of Catalans want it, and that it would be undemocratic to ignore them. The results of the last Catalan elections, and almost all public-opinion surveys on the issue conducted in Catalonia over the last two years, are solid proof that this majority actually exists. This observation is reinforced by the massive mobilizations for Catalonia's right of secession that have taken place during the last 5 years, along with the unofficial referendums on independence which started in 2009 in different cities around Catalonia (Guinjoan and Muñoz, 2013). However, the line of reasoning is subject to the same criticism that plebiscitarianism normally receives: if the will of any group of people is enough to legitimate secession, then the door is opened to all sorts of undemocratic evils, particularly strategic actions by privileged minorities, and "recurring" secessions (Ovejero, 2012).

c) *Just-cause theories*: defense of Catalan secession (rather than the right of secession as such) is usually based on a denunciation of the unfair distribution of revenue by the Spanish government among the autonomous communities. In the words of the leader of the left-wing, independentist party Esquerra Republicana de Catalunya, "we are 16% of Spain's population, produce 20% of the GDP, pay 24% of the taxes, and then receive 10% of the revenue" (Miró, 2013). Within the just-cause framework, others base themselves on the assumption that the Spanish Constitutional Court ruling which marked down parts of Catalonia's *Estatut*, arguing that it proves that Spain's restrictions on regional autonomy reject several reasonable demands made by Catalan nationalists, providing a justification for secession. Allen Buchanan, a leading proponent of just-cause theories of right of secession, has recently stated: "In my judgment, a stronger case for Catalonia having the nonconsensual right to secede can be made

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7   In political discourse on Catalonia, a distinction is usually made between independentist organizations, which are straightforward secessionists, and pro-sovereignty ones, which, though explicit in their support to Catalonia's right of secession, contain within their ranks both clear secessionists and people who push for some sort of middle ground between full independence and the current autonomy. While this distinction is rather fuzzy, we prefer to maintain it in this article, to give a realistic description of Catalonia's parliamentary and political landscape.

on the basis of allegation that Spain has not shown good faith in responding to Catalan pleas for greater intrastate autonomy." (Buchanan, 2013). Opposed to this line of reasoning, and usually drawing on Buchanan's earlier ideas, some remedial theorists assume that the right of secession is only legitimate in the case of extreme injustices, such as major violations of basic human rights. Any other grievance against the current legal order in a democratic state has to be presented, reasoned and accepted by the whole population of the democratic state (Ovejero, 2012).

In our opinion, it is evident from this brief summary of normative theories on right of secession applied to the case of Catalonia that none provide a stance that could easily be adopted by Catalan secessionists as well as unionists, without speaking of the rest of Spain. Catalonia's right of secession (not just Catalonia's secession itself) is a highly divisive issue which cannot be easily solved with ideal theories of a moral right of secession. To ensure that debate around Catalonia's secession develops peacefully and reasonably, we find it much more promising to defend the notions of pragmatic theories of constitutional right of secession. Rather than discussing who has and who does *not* have a "moral" right of secession (which is, of course, a relevant and legitimate discussion), we should start to envision a constitutional design which can channel Catalonia's secessionist debate towards a peaceful resolution by offering, both to unionism and secessionism, a credible prospect that their demands will be treated fairly. In this context, the approach of the Supreme Court of Canada seems highly promising. On the one hand, it requires secessionists abandon the idea that Catalonia has an unrestricted right to secede; on the other hand, it does not allow the Spanish government to use a restrictive interpretation of the Constitution as a way to forbid a referendum on Catalonia's secession, or to ignore a clear "yes" victory in a referendum on the grounds that the Spanish people as a whole are the only "sovereign" of Spanish territory.

This is not to say that this approach would be free of problems. First of all, there is the fact that Canadian and Spanish constitutional traditions are quite different, with the first one being rooted in the idea of Canada as a federation of provinces, and the second one being highly influenced by a vision of the state as being equivalent to the nation and both to the sovereign. Apart from this, even if both the Spanish government and Catalan secessionists agreed to call a consensual referendum on independence followed by a negotiated secession process in the case of a yes vote, we argue they would need to talk about issues such as the framing of the question, what majority is required for a clear "yes" victory, what would be discussed in possible secession negotiations, and what to do in case negotiations fail. Mutual recognition of a legitimate say in this process would be a good starting point for a peaceful

and reasonable resolution of this democratic conflict. Or, at least, it would be better than the situation where both sides insist on having unrestricted "sovereignty" over Catalan territory, regardless of the normative reasoning underlying their claims.

It should be noted that the Catalan government, led by the pro-sovereignty Convergència i Unió and sustained by the *Pacte per la Llibertat* deal negotiated with the pro-independence party Esquerra Republicana, has repeatedly affirmed its will to explore every possible way to conduct a referendum under an agreement with the Spanish government. What should then be done if Madrid ignores or denies the offer? In the opinion of Allen Buchanan "if Spain ignores a strong mandate for secession in a well-conducted referendum and at the same time does not make a credible offer of greater autonomy, then I think the Catalan government should seek regional (EU) or international (UN) support to pressure Spain to cooperate" (Casulleras Nualart, 2013). We take the opposite view: it is not the Catalan, Spanish or any other government who should look for international support for its cause in a secessionist conflict if the other party does not want to begin reasoned dialogue. The international community should search for mechanisms of arbitrage and mediation to promote pragmatic, reasonable and peaceful solutions to the conflict, particularly in countries which already enjoy the stability and peace granted by a democratic government.

5. CONCLUSION

Secession processes are highly complex, with a multitude of normative and equally complex issues intervening: self-determination, basic human rights, redistribution of resources, the center-periphery distribution of power, cultural diversity, equality among citizens, etc. It is not hard to understand why debates on secession processes are much more complex than those on the general moral right of secession: they are hard to solve by just applying a general theory to a particular case. The "rational" approach described at the beginning of the article is rather unsatisfactory when applied to specific cases, and we stated that we believe in the "reasoned" approach, trying to balance the demands of both sides of secessionist conflicts rather than to determine which demands are legitimate and which are not. Our point of view is that a set of demands gains legitimacy to the extent that it recognizes and respects the other side's equally respectful set of demands, however opposed they may be. The next step is to look for ways to channel this contradiction by means that ensure any confrontation will be peaceful, fair and democratic.

We believe, following the "reasonable" approach, that the (quasi-) constitutional strategy envisioned by the Supreme Court of Canada for the case of Quebec is the most
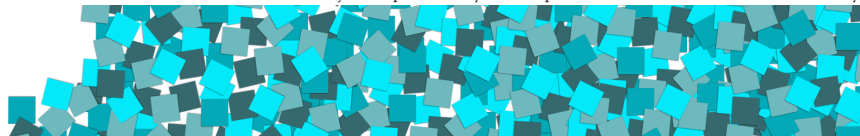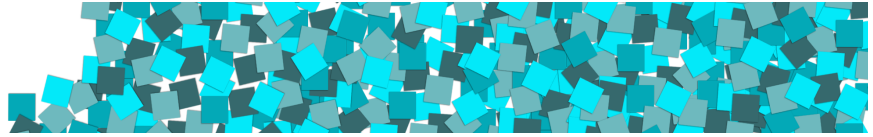
promising for channeling a secessionist conflict, particularly within a liberal democracy, as defended at a more theoretical level by scholars like Weinstock, Norman or Jovanovic. However, when applied to other cases such as Catalonia, the strategy reveals its limitations and problems, such as the difference between constitutional traditions, the lack of provisions for handling failed negotiations between secessionists and the central government, and the lack of arbitration mechanisms to oversee the process. Fur-

ther research is necessary to establish ways to overcome these limitations. The main concern of this article was not to answer a question, but to reformulate it. Instead of asking who has a right of secession it is better to ask if there is a way to regulate secession processes so that they are peaceful. For us, this is what it means to have a "reasonable", rather than a "rational", normative approach to secession.

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ARTICLE

The Fractured Island: Divided Sovereignty, Identity and Politics in Ireland

Alan Bruce

Abstract

Since the final conclusion of the Good Friday Agreement in 1998, the violent conflict and military operations convulsing the state of Northern Ireland since 1969 appeared over and peace restored. Despite this, profound mistrust and division remains. This paper examines the factors influencing historic conflict in Ireland with reference to the acceptable forms of governance in a deeply divided society with antagonistic and diametrically opposed concepts of citizenship, allegiance and sovereignty. The changes have been fundamental and profound: absence of military occupation models, entry into public life and political responsibility of former combatants, development of power-sharing governmental structures and progress of civil society. The fact remains that the Good Friday Agreement was seen by the majority community – the unionist population – as a guarantee to assert its intention and desire to remain an integral part of the United Kingdom (to remain British). In the same manner and in the same way, the Agreement was seen by the minority community – the nationalist population – as a guarantee to assert its intention to leave the United Kingdom and to re-unite with the rest of Ireland (to remain Irish). Ireland has never been a uniform or agreed socio-political entity. The nature of Irish society is been fragmented, divided and polyglot. The fractured states that emerged from the forced partition of Ireland in 1922 epitomized the crises and issues around sovereignty and identity. Disputed sovereignty in Ireland is analyzed in relation to three key associated factors: ownership, legacies of colonial power and the dynamics of changing demographics.
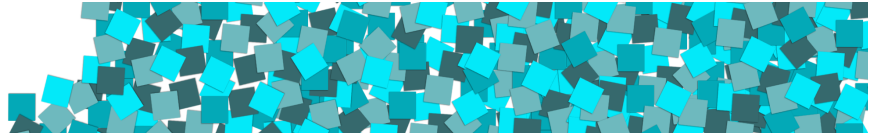
AGREEMENT: END OR BEGINNING?

With the conclusion of the Good Friday Agreement (or Belfast Agreement) in 1998, a turbulent chapter in the history of Ireland seemed to have ended. The violent conflict, war and military operations that had convulsed the state of Northern Ireland since 1969 appeared over and peace restored. This brutal conflict had been one of the longest running civil disturbances in the world and the greatest military and community conflict in Europe until the onset of the Balkan wars in the early 1990s.

Despite the enormous difficulties in securing cross-community support, as well as the support of the majority of the populations in the two States that make up the island of Ireland (the Republic and Northern Ireland), the Belfast Agreement was massively endorsed by two referendums in 1998. This was justifiably hailed as a major breakthrough and as the end of a phase of extreme violence and conflict.

Despite this, profound mistrust and division remained, particularly among the unionist (or pro-British) elements of the population: the Agreement employed an often deliberately vague phraseology in terms of acceptance of responsibility for past actions and an approach of 'creative ambiguity'. There followed a period of some eight years in which false starts, political blockades, police reform and the enormous challenges of military de-commissioning were faced.

Nonetheless, by 2007 the political mechanisms were up and running, an administration based on power sharing was operational and a new Northern Ireland began to reflect the feeling that a better future was slowly emerging. In many ways, the progress has been remarkable. This has also been the focus of the most successful application of the theory of consociational theory.

Consociational theory, developed by Arend Lijphart and other scholars (Lijphart, 1975), is one of the most influential theories in comparative political science. Its key contention is that divided territories (whether regions or states) with historically antagonistic ethnically, religiously or linguistically divided peoples, are effectively, efficiently and sometimes optimally governed according to consociational principles.

This has been intensively examined by scholars as both a method and approach that demonstrate resolution of seemingly intractable problems while also implementing forms of governance, which have a relatively wide level of acceptance.

"Complete consociational democracies respect four organizational principles:

1) Executive power-sharing (EPS). Each of the main communities share in executive power, in an executive chosen in accordance with the principles of representative government.
2) Autonomy or self-government. Each enjoys some distinct measure of autonomy, particularly self-government in matters of cultural concern.
3) Proportionality. Each is represented proportionally in key public institutions and is a proportional beneficiary of public resources and expenditures.
4) Veto-rights. Each is able to prevent changes that adversely affect their vital interests." (McGarry and O'Leary, 2006)

The development of functioning administrative and political mechanisms has been accompanied by a remarkable reduction in violence and civil strife. Solid economic progress was made, with levels of inward investment in post-war Northern Ireland beginning to show solid improvement. Policing reforms were significant and far-reaching and reflected a dramatic re-alignment of the role, nature and demographic composition of the police service.

From a pre-Agreement position where the police force (the Royal Ulster Constabulary) had been 93% Protestant, the new Police Service of Northern Ireland, by 2010, was 69% Protestant and 31% Catholic. More significantly, it received notably higher levels of public support and approval.

The changes have been fundamental and profound. The absence of military occupation models, the entry into public life and political responsibility of former combatants, the development of a power-sharing governmental structure and the progress of civil society are positive and welcome developments for the vast majority of people.
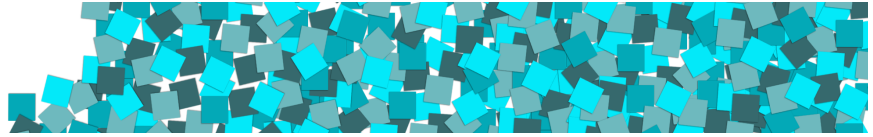
The absence of violent conflict, however, is not the same as peace and sustainable collaboration. The fact remains that the new models of governance in Northern Ireland are papering over the divisions around two fundamentally and diametrically opposed national aspirations.

The fact remains that the Good Friday Agreement was seen by the majority community – the unionist population – as a guarantee to assert its intention and desire to remain an integral part of the United Kingdom (to remain British). Similarly the Agreement was seen by the minority community – the nationalist population – as a guarantee to assert its intention to leave the United Kingdom and to re-unite with the rest of Ireland (to remain Irish). The Agreement, in one of its more ingenious phrases, allows citizens in Northern Ireland to assert individually that they are Irish or British, or both or neither.

"Mutual recognition of national claims lay at the core of the Agreement. Ireland has recognized the British political identity of unionists. The UK recognized Irish northern nationalists as a national minority, not simply as a cultural or religious minority, and as part of a possible future Irish national majority. Unionists who made the Agreement recognized nationalists as nationalists, not simply as Catholics. Nationalists recognized unionists as unionists, and not just as Protestants." (McGarry and O'Leary, 2002, p. 58)

Mutual recognition however, is only one step. That in itself has proved intensely problematic. It masks the significant disparities between different national traditions. It also masks the trajectory of history and the repeated insurrections by the population of Ireland to secure rights, recognition and autonomy in the face of often overwhelming levels of oppression and marginalization. It is unlikely that these issues will diminish in the coming years.

"Specifically, the two states have been keen to provide the mechanism through which paramilitarism can be diverted into what is deemed to be political 'normality'. An obvious characteristic of conflict resolution in the Irish case is that the illusion has to be created whereby each side will achieve some of its ultimate goals and objectives without being seen to lose face. This process

of political confection misses the reality that without the removal of the causes of conflict the discord within Northern Irish society will lie dormant and, as is noticeable at present, reproduce acceptable levels of violence." (Shirlow and Stewart, 1999)

THE CONTINUING THREAT

Under the surface of the new and peaceful Northern Ireland, three critical fault lines remain which in themselves provide a real and present threat to stability and peace.

The first is the external economic environment, which has undergone a profound shift since the collapse of the economy and accompanying banking crisis since 2008. Much of the presumed successful outcome of the Agreement was explicitly based on the creation of a viable economic space where inward investment, improved competitiveness and a vibrant ICT-enhanced export sector would create full employment for the population. The impact of the crisis, the inability of the new Northern Irish administration to raise sufficient tax revenue and the severe impact of public spending cuts on the most heavily subsidized economy in the UK all have a disproportionate impact on Northern Ireland.

"From the case of Northern Ireland, there are four specific economic lessons to draw:

1. Economic disparity was a principal aggravating factor in touching off and sustaining violence. Together with a series of legislative changes, improved economic conditions helped reduce the disparity between Catholic and Protestant unemployment rates from as high as 14% in 1985 to about 3.5% in 2004;
2. Public sector financial support by the British government underpinned the economy through the most difficult periods of the Troubles, although a side effect of subsidies was to reduce productivity;
3. Private sector growth supported by substantial foreign direct investment, from the US in particular, was a key driver of increased employment and improved living standards;
4. International mediation began around economic issues.

The importance of economics in conflict resolution is that it sets aside the question of motive, of grievance, of historical rights and wrongs, and focuses instead on the question of economic opportunity: what conditions – economic conditions in particular – have made the conflict possible? For if these conditions can be removed, progress to end the conflict might be made,

just as surely as if the motives had been removed." (Portland Trust, 2007)

The second is the shifting importance of external relations. The Belfast Agreement has key elements in relation to the institutional relationships contained therein: between Northern Ireland and the Republic, between Northern Ireland and the United Kingdom, between the United Kingdom and the Republic. In addition, there is both implicit and explicit reference to relationships with the United States and the European Union.

Partly as a result of the generalized economic crisis since 2008, but also as a result of changing external landscapes, we are witnessing significant issues and changes at the level of the European Union. In addition, the economic implosion of the Republic of Ireland has cast a profound shadow over many elements, not least trust in the Republic as a model for effective and meaningful socio-economic future development for the northern population. And then there is the question of shifting constitutional priorities and systems in the United Kingdom itself. The real possibility of both Scottish independence with a forthcoming referendum in 2014 and the growth of specifically English nationalism and overt hostility to UK membership of the European Union are significant factors in future landscapes around national identity and aspirations in both parts of Ireland. They also have implications for the stability of the current conflict resolution models employed at the level of governance.

Third, there is the continuation of embedded sectarianism, deep community divisions and the persistence of overt hostility and prejudice between members of the main traditions in Northern Ireland, broadly summed up as Catholic and Protestant (although these labels mask much more complex and deeper divisions). The shifting demographic balance only intensifies some of these dimensions. For example, on the foundation of the state of Northern Ireland in 1922, the population of the six counties was roughly 70% Protestant and 30% Catholic. Today it is 55% Protestant and 45% Catholic. This indicates that the future may well see a Catholic majority, with clear implications for the constitutional position of Northern Ireland. To put this bluntly, unionism now depends on securing Catholic and nationalist support for its cause, a profoundly contradictory position.

In December 2012, the emergence of significant violence and rioting in loyalist working class communities emerged as a result of the decision by Belfast City Council to restrict flying the UK union flag to a limited number of specified days during the year. This minor change (itself a significant compromise and concession by the nationalist community) was seen by some loyalist elements as a fundamental attack on the constitutional position of the state and a denial of unionist identity. The violence was severe, with a marked increase in attacks on the police. This new
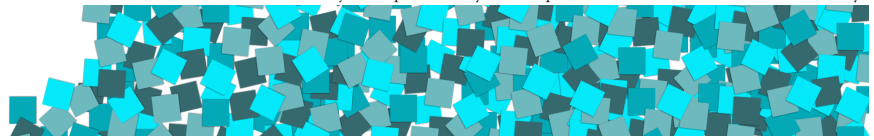
neutral service is now seen as yet another 'concession' to nationalism. The rapid intensification of polarization is acknowledged by all as deeply worrying. It also speaks of the high levels of alienation and fear in unionist communities, themselves beset by a host of social and economic challenges. For these communities, the benefits of the peace process are portrayed as not immediately evident.

All these issues point to the continuance of dispute as a manifestation of divided concepts of sovereignty and identity. This is the fundamental divide in Northern Ireland. If the Belfast Agreement is seen as the final stage in the conflict resolution process to end war, then the issue has barely been addressed. If, however, it is seen as the beginning of a process, issues around understanding sovereignty can be addressed only with the clear expectation on all sides that this opens a parallel discourse on national identity and allegiance. In the Irish context, this re-opens the discourse on historic conflict and struggle around national liberation. It is in these contradictory and shifting constitutional sands that containment of the sources of conflict and dispute are being articulated in Northern Ireland.

HISTORIC CONTEXT OF DISPUTED SOVEREIGNTY

The conflict from 1969 to 1998 in Northern Ireland was only the most recent phase of conflict and violence that has characterized Irish history since the sixteenth century and the implementation of formal colonization policies and planned military conquest by the Tudor régime. In fact, the roots can be traced even further back to the initial Norman invasion of the Irish petty kingdoms in the twelfth century.

Ireland always remained on the periphery of European politics and statecraft. It was however, in every significant sense, the first conscious colony and served as a laboratory for the colonizing imperatives that would shape English expansion in North America and the Caribbean. The internal processes of English (and subsequently British) colonization in Ireland mirrored the process described by Galtung (2009) of exploitation, penetration, fragmentation and marginalization. One result of this lengthy process of invasion, ethnic displacement and subordination was the creation of a profoundly divided and fractured political entity, which never achieved autonomy or self-determination in its economic, social or political affairs. Consequently, Irish history became one of lengthy and regular uprisings and revolts against the established order, and of a gradual decline in the standard of living that, by the time of the impact of the Great Famine in 1846-49, had reduced Ireland to a demographically shattered state with one of the lowest standards of living in Europe.
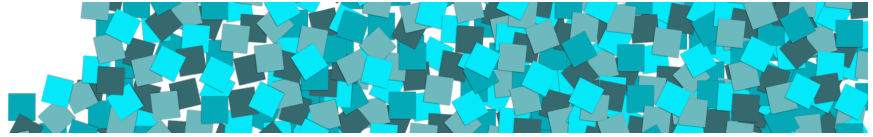
The political solution proposed and implemented by the British State in 1922, after the War of Independence, rested upon the partition of Ireland into two states. The Irish Free State (later evolving into the Republic of Ireland in 1949) occupied the majority of the island and was formally self-governing and overwhelmingly Roman Catholic. Northern Ireland occupied the six northeastern counties of Ireland and remained constitutionally part of the United Kingdom, although with an autonomous parliament and government which rapidly implemented its own laws, security and governance mechanisms.

This state, over 70% Protestant at the time of partition, rapidly became a deeply divided and sectarian entity whose very existence was not accepted by a large minority of the population, which sought the restoration of a united Ireland and the recognition of equal rights. The majority population aimed to maintain the status of Northern Ireland as part of the United Kingdom and the Protestant and British nature of the territory it controlled. This conflict about fundamentally different political aspirations has been exacerbated by inequalities between the two communities, by the wounds inflicted through violence, but also by increasing intra-communal diversity.

"The conflict in Northern Ireland is primarily caused by incompatible conceptions of national belonging and the means to realize them. These two different conceptions are the goal of a united Ireland, pursued by Nationalists and Republicans, and the goal of continued strong constitutional links between the province and the United Kingdom, desired by Unionists and Loyalists. Historically, these two traditions have been associated with two different religions – Catholicism and Protestantism." (Wolff, 2002)

This divided sense of allegiance underlines the understanding of the perennial conflict dominating Northern Ireland's brief history as being a conflict between two fundamentally different conceptions of national belonging. In that classical sense one can approach the dimensions of Irish conflict from the position of divided allegiance and its political manifestation, divided sovereignty. In fact, the roots of this division are more complex and go far deeper into the origin and outworking of the European colonial and imperialist adventure, as a conscious articulation of state policy since the sixteenth century.

In this sense one can look at the other critical dimensions of sundered Irish identities and allegiances: the persistence of systemic discrimination against large sections of the population; the creation and maintenance of blatantly discriminatory criminal codes against indigenous culture, language and identity; the systematic denial of legal and civil rights as a conscious act of state policy; the overt use of sectarianism as an instrument of political control and the attempted demographic transformation of the island's

population through a variety of measures from land confiscation to ethnic transfer to forced starvation and emigration.

This alters the conceptualization of current understandings of divided sovereignty as found in other countries to one of a dynamic process and interrelationship between conquerors and conquered, ruler and ruled. The understanding of this divided sovereignty as a result of explicit colonial policy and control is what makes Irish political articulation of identity unique in contemporary European terms.

Thus the disputed sovereignty of Ireland in general (for this issue long pre-dates the creation of Northern Ireland in 1922 by the partition of the island) is paralleled by embedded inter-communal hostility and conflict, most seen in the persistence of sectarianism, bigotry and prejudice. The work of MacGreil has explored this in great depth over many years. The profound and sustained polarization between communities in Northern Ireland is evidenced at almost every level. Apart from lack of contact and engagement, there usually exist separate institutions and structures for education, sports, culture, religious expression and so on. Many writers have compared this, not unrealistically, to a form of self-enforced apartheid.

Those affected by sectarianism speak movingly of the consequences. These center on profound levels of fear and anxiety. Others speak of humiliation and distress. Remembrance of taunting, name calling and jeering is commonly referenced. Insult, rudeness and insensitivity are among the wrongdoings described. The critical point is that these feelings are reality for those who have experienced them. They cannot be justified or rationalized by others. The victims of sectarian attack or discrimination are the only experts of their own reality. And their witness is powerful. Sectarianism is targeted and awful (Farrell, 1976).

The stark reality of conflicting ideas of sovereignty and allegiance is contained within the narrative of centuries of exploitation, colonization, plantation and dispossession. It is critical to locate conflict resolution mechanisms within this context, which is both highly charged and deeply contradictory for the populations concerned. Terry Eagleton, himself a son of the Irish diaspora, has written cogently of this.

"…the struggle in Northern Ireland writes dramatically large a tension between political principle and political realism which is of more general import. It is, in part, a clash between actuality and counter-factuality – between fact and value, indicative and subjunctive, positivist and idealist, pragmatist and utopian, what does and what should (or should not) exist. In the case of Northern Ireland, these complex tensions are overlaid by a historical/contemporary axis, such that wholly divergent views of the region emerge depending on whether one is examining it synchronically or diachronically, from the standpoint of its political genesis or the viewpoint of its empirical existence." (Eagleton, 2003)
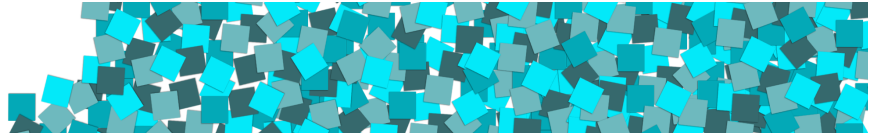
CHANGING FUTURES

Discussion of change has become almost a cliché in the Irish context. The transformation of a largely rural and agrarian society, with a self-perception of racial and cultural homogeneity, into a complex and multi-ethnic, postmodern melting pot at the cutting edge of technological advance, is one of the great myths of contemporary Irish public discourse. Like all myths, it does encompass some surface truths while explaining little about the underlying reasons for a historical fact and economic realities. The change process in Irish society is similar to that experienced by other societies undergoing the dual processes of industrialization and integration into a world market economy. That this process had commenced several centuries previously with the impact of colonization, expropriation and plantation does add originality to the Irish experience – especially in a specifically European context.

It also means that Irish social diversity is not a new phenomenon. The fracture lines of Irish identity are both complex and laced with the potential for significant violence. The norm for Irish society for many centuries has been one of violence and contentious fragmentation with little, if any, shared sense of unity or common purpose. The sense of a settled, cohesive society moving through the standard European phases of state formation, balanced economic growth and enhanced civic enlightenment has not been Ireland's. Sovereignty itself has been a disputed notion around external control and domination.

The traumatic course of Irish history has meant that change has usually been accompanied by deep resistance or panicked sectorial clutching to often meager economic gains. While the specificity of Irish history does not negate broad economic trends and developments, it lends a unique perspective to legacies of difference and disadvantage in the process of economic transformation. The depiction of Ireland as a homogeneous and uniform cultural polity is a recent one. It has its origins in the settlements achieved by the Land League, the pervasive cultural influence of the Roman Catholic Church in the post-Famine era and the inert conservatism of the two States that emerged from the Partition settlement. The trauma of the last thirty years in Northern Ireland has been as much linked to social change, urbanization, inequality and cultural identities as it has to movements for or against political unification.

The key point is that Ireland has never been a uniform or agreed socio-political entity. The nature of Irish society has been a fragmented, divided and polyglot one. In its very fibers, Ireland has been a laboratory of diversity. Its cultural mosaic has encompassed layers of identity not to

be expected in a remote offshore island. Its discontinuities and divisions have however been the source of extraordinary creativity and interplay, where no single culture (Celtic, Gaelic, Danish, Norman French, English, Scottish, Flemish, Jewish or Huguenot) has had a monopoly of Irishness.

In both states that emerged from the partition of Ireland in 1922, civic responsibilities and oversight were subcontracted to private, largely religious agencies. Ireland is presently grappling with the revelations of profound institutional abuse and extensive networks of denial and cover-up in its educational, social, institutional and commercial spheres. The uncertainty and shock stemming from disclosures about the litanies of abuse have had as much to do with locating responsibility in state authority and legitimacy as loss of faith in the traditional self-image of a caring and supportive society.

The traditional depiction of Irish backwardness and underdevelopment has a strong parallel with contemporary depictions of social exclusion. Within every category, Irish society could be viewed in *toto* as a metaphor for under-privilege and disadvantage. The structural inequalities were built into a fragmented and discriminatory polity. As the decades of disadvantage unfolded in the twentieth century, Ireland seemed unable to emerge from the social, economic and cultural constraints that dragged it down. In such an environment, Raymond Crotty, the chronicler of agricultural underdevelopment and inequality, observed with a wry bitterness that Ireland had become simply unable to support as many people as cattle.

As one astute academic observer has pointed out, Ireland operates an ambiguous position in the current global economy, where notions of underdevelopment and limited sovereignty intersect:

"Ireland's position in the global system is a very contradictory one. At one level, it is characterized by exceptional levels of dependency upon external capital, both north American and European. At the same time, Ireland's position as a 'bridge economy' between the US and the EU has enabled Irish people to have a significantly higher income than they might otherwise have had. The GDP figures are exaggerated certainly, but there is no getting away from the fact that wages in Ireland are, by and large, significantly higher than in Mediterranean Europe. To many people, this seemed like a good deal. It is only with the global financial crisis that the downside of the deal has become more evident. Suddenly Ireland was being demoted to the status of a 'peripheral' state, albeit a periphery of the world's second major core region." (Coakley, 2012, p. 8)
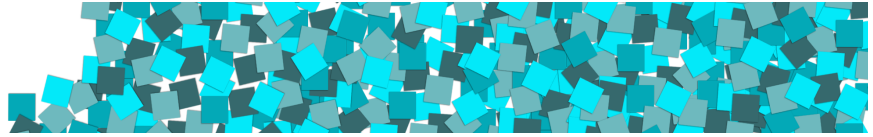
Decades of deprivation, emigration, political violence, unemployment and disadvantage were connected to the disputed nature of sovereignty and national identity. The attitudes, practices, rationalizations and understandings of those decades persist, and persist profoundly, in the social and economic practices of modern Irish society, both north and south. The specific nature of Irish social dislocation intersects, and is organically connected to, more widely recognized aspects of the processes around both national identity and growing globalization.

As far as the relationship between individual citizens, identity groups and the state is concerned, institutional design is about the recognition and protection of different identities by the state. On the one hand, this relates to legislation on both human and minority rights, that is, the degree to which every citizen's individual human rights are protected, including civil and political rights, as well as the extent to which the rights of different identity groups are recognized and protected. While there may be a certain degree of tension between them, (such as between a human rights prerogative of equality and non-discrimination and a minority rights approach emphasizing differential treatment and affirmative action) the two are not contradictory, but they need to complement each other in ways that reflect the diversity of divided societies and contribute to peaceful accommodation.

Ireland remains a partitioned country. The two states emerge from a political device of explicit British imperialism, in the 1920s the most powerful form of imperial control. The secession of a part of the United Kingdom, the re-establishment of an Irish state after 122 yeas, the articulation of a new form of Irish State and identity were not small achievements. But they were deeply constrained by a series of imperial restrictions that touched on the very notion of sovereignty and autonomy. These related to many issues and themes, from monarchy to external affairs, from military bases to the ability to develop economically without an independent currency. The southern Irish state moved adroitly through the cataclysmic events of the 1930s, in an attempt to extend its sovereignty by various measures. The ultimate act of sovereign decision-making perhaps culminated in the decision to remain neutral in the Second World War.

Northern Ireland was forged in the reactionary mass movement to maintain Ireland within the United Kingdom and to prevent an autonomous parliament being established in Dublin. Ironically, this struggle failed but the leadership of the majority Protestant community in Northern Ireland was prepared to accept partition and the establishment of an autonomous entity in Belfast. This curious state was at once part of the United Kingdom but in critical respects able to make its own decisions in relation to security and governance. From the outset, the state of Northern Ireland was beset by sectarianism, conflict and regular periods of severe civil disturbance. The instability was to continue until the onset of the crisis in 1969 and the final abolition of the Stormont government in 1971.

These fractured states epitomized the crises and issues around sovereignty and identity: the very name of the state often challenged. To this day 'Northern Ireland' is used by Protestants or unionists while Catholics or nationalists prefer the much more nuanced terms of 'the North' or 'north-east Ulster' — anything but the official name.

The current arrangement accommodates two very different national aspirations and conceptions of identity in a makeshift but effective way. The prime concern since 1998 has been that the agreements would unravel and that underlying sectarian (one could at times almost say ethnic) tensions would erupt and see the entire edifice collapse. This has not happened. The institutions established and the mechanisms employed have functioned effectively. This of course is largely due to the extraordinary cohabitation of two previously profoundly antagonistic and hostile parties: the Democratic Unionist Party (DUP) and Sinn Féin (the political voice of the military insurgency since 1969, the Irish Republican Army). This extraordinary coalition has provided a shared government experience that could not have been envisaged only 15 years ago.

The fact that both communities in Northern Ireland can partake in a power-sharing agreement should not and cannot obscure the fact that diametrically opposed understandings of citizenship and allegiance remain. Both sovereign governments (Irish and British) have facilitated the sharing arrangements. Both have formally indicated 'no selfish interest' in maintaining the status quo. Whatever the benign intentions, it is clear that expectations differ greatly among both communities. For unionists, the argument is over. Northern Ireland will remain in perpetuity a part of the United Kingdom, and nationalists must accept this and get the best deal they can. For nationalists, the absurdity and failure of partition have been demonstrated and the first step has been achieved towards an eventual reunification of Ireland.

Conflicting understandings of sovereignty have always been evident in Irish history. These legal and constitutional formalities often merely overlaid the realities of power, dispossession and ownership. The formal establishment of the Kingdom of Ireland in 1540 meant nothing of the sort. There was no resident monarch, no independent parliament. Like Bohemia, Ireland remained the reserve of its lords and landowners, themselves alien to the vast majority of the aboriginal population. The most significant event of the war-torn seventeenth century was the introduction of many thousands of English and Scottish 'planters' – colonists who were explicitly recruited to move to Ireland to supplant the local population and to produce a trusted class of 'loyal' yeomanry.

Even these plantations of the 17th century turned, within three generations, to a net emigration of the Ulster Scots population. Ireland was a poor and peripheral European country with socio-economic characteristics more in common with the colonial economies to which it was linked through the common experience of British imperialism. Ireland was scarred by economic deprivation and a long history of emigration that was dramatically accelerated by the 1847 Famine and subsequent demographic near-collapse.

The constants around sovereignty remained even under the apogee of Ascendancy rule in the late 18th century (when Ireland did have something approaching an autonomous parliament). The laws and practices reinforced a concerted and deliberate policy of religious persecution and discrimination, loyalty tests, land grabs and measures to extirpate the Irish language. The legacy of these events has been preserved to our own times.
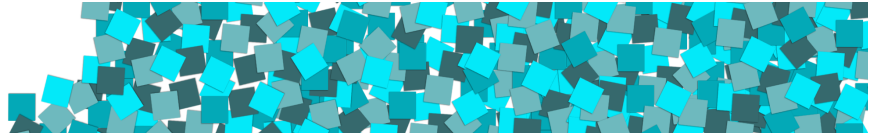
Disputed sovereignty in Ireland rests on two key associated factors. One is ownership and power, the other is demographics. State power in Ireland since the plantations and conquests of the 17th century depended on those who owned the land and who derived extraordinary profit from that ownership. The history of subsequent Irish unionism, in particular, demonstrates the influence of these classes in dictating the terms of the constitutional arrangements that suited their economic interests first, hardly those of the population at large.

Professor Bryan Fanning has indicated that Ireland's own, long, 19th century began in the aftermath of the 1798 Rebellion with the 1800 Act of Union, a political settlement that lasted formally until 1921, but had become ineffective by 1912. This he sees as part of a wider European century that ended with the First World War. The thinkers, writers and commentators who produced outsider assessments of the condition of Ireland, addressed a period of seismic change, political and economic. Some wrote as friends of Ireland, some as defenders of the status quo. They presented either environmentalist or cultural essentialist explanations of Irish social problems, and sometimes conflated both.

Fanning feels they based their cogent observations on the work of Jonathan Swift's 1720s analysis of Irish social and economic woes (perhaps the most cogent guide to issues of disputed sovereignty and conflict in Ireland). In his essay *The Uses of Irish Manufacture*, Swift lambasted landlords who "by unmeasurable screwing and racking their tenants all over the kingdom have already reduced a miserable people to a worse condition than peasants in France, or the vassals in Germany and Poland; so that the whole species of what we call substantial farmers, will in a very few years be utterly at an end."

Swift warned that such exploitation was never without repercussions:

"I know not how it comes to pass (and yet perhaps I know well enough) that slaves have a natural disposition to be tyrants; and that when my betters give me a kick, I am apt to revenge it with six upon my footman, although perhaps he may be an honest and diligent fellow. I have heard great divines affirm that 'nothing

is so likely to call down universal judgement from Heaven upon a nation as universal oppression'… Whoever travels this country, and observes the face of nature or the faces, and habits, and dwellings of the natives, will hardly think himself in a land where either law, religion, or common humanity is professed." (Fanning, 2010)

What was evident in the 1720s is relevant today in terms of power and Irish governance. All discussions on disputed sovereignty must bear this in mind.

As for demographics, the current realties of the early 21st century represent a remarkable change in Ireland's experience of population movement. Historically, and particularly over the past two centuries, Ireland has been a country of strong outward emigration. The vicissitudes of Irish history and the sustained economic underdevelopment and weakness of the country meant that strong patterns of emigration were established and maintained for decades. Today, in both Irish states, the population is growing. And, in addition to the indigenous population, there is a significant increase in non-Irish migrant populations.

From national, international and local perspectives, trends at the European level can be cross-referenced to policy concerns and directions articulated by both the European Union and national governments. This is confirmed by Irish national bodies involved with immigration and interculturalism – as well as a range of specific sources of academic and research expertise.

The broad trends at national and European levels suggest:

- Immigration will remain a permanent feature of most European societies.
- Inward migration is necessary to maintain economic activity and functions because of altered indigenous European demographics.
- Issues around accommodation and integration are highly contentious in some countries.
- Associated issues of xenophobia and racism have the potential to cause significant issues of destabilization and conflict.
- Debates around national approaches are often confused and strongly demarcated between themes around assimilation, multiculturalism, interculturalism, etc.

The specificity of Irish circumstances is notable. Uniquely, Ireland has transformed itself from a country of significant emi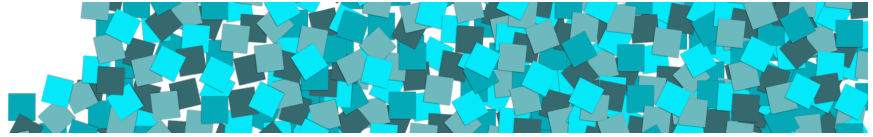gration to one of net inward migration in a remarkably short period of time. There is no tradition of debate or analysis on immigration, although there is a long tradition of support for those Irish 'exiles' compelled to emigrate. On the surface, this is seen by some commentators as a factor which pre-disposes Irish indigenous populations to be more empathetic towards the needs of immigrants and have enhanced degrees of tolerance.

As the work of MacGreill and others indicate, however, there are issues of prejudice, discrimination and intolerance. Pre-existing attitudes in Ireland towards travelers indicate that hostility towards out-groups can be felt and expressed. While, regarding immigrants, this has not been consistent, there is the potential for this to happen. In addition, while the economic contribution of immigrants has been acknowledged, issues arise around the capacity of Irish society to incorporate national and ethnic differences, in the longer term, in all their cultural, religious and linguistic dimensions.

Interaction with the host community (or with other migrant communities) can produce unexpected challenges and experiences (not all of which are negative). The increasing engagement of immigrants with social structures and services may contrast sharply with earlier experiences in the home country. Issues around familiarity with and navigation through, often alien, bureaucracies and systems can seem daunting. It also raises significant questions of identity for the host community. Before defining the other, they too embark on a process of discovery about who they are and their identity.

It is advisable that an international perspective be adopted from the outset when addressing concerns around disputed sovereignty in Ireland, north and south. The long struggle for national identity is now confronted by a respite in terms of military violence and conflict. But deeper issues around identity and governance will be subsumed in discourse around European governance, ownership of resources and the growing diversity of the populations. In the intersection of these issues and themes, constitutional provision will need to link to pressing concerns around culture, migration and meaningful social inclusion. No problem or issue in Ireland is unique to Ireland. Every problem found in Ireland is a lesson and has added value for understanding those from other countries: however wide the surface disparities, issues around power, exclusion, discrimination, difference and prejudice have common threads, largely because they have a common origin.

The analysis of power, social change and human rights will form the basis of the next stages on the question of sovereignty – shared, disputed or absolute – on the island of Ireland in the coming decades.

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ARTICLE

Sovereignty over Jerusalem

Hani Albasoos

Abstract

The Palestinian position towards Jerusalem is in absolute contradiction to that of Israel. The indications are that both parties firmly hold on to their positions. The Israelis aim to unify the city as the capital of Israel and refuse to negotiate other options. The aim of Palestine is to establish Jerusalem as its capital, keeping the city open for worshippers from different faiths and religions. The strong Israeli position in negotiating the future of Jerusalem with the Palestinians is based on the changes made since they occupied the city, particularly the Israeli settlements constructed in the Palestinian population centres. Israel has succeeded in removing Palestinian features from West Jerusalem in particular. However, the Palestinian position is sustained by the international community, which neither recognises the Israeli transformation of Jerusalem nor acknowledges the city as the capital of Israel. In addition, United Nations resolutions have frequently condemned Israel for its activities in Jerusalem and also do not consider Jerusalem to be the capital of Israel. Some UN resolutions have demanded complete cessation of Israeli settlement activities and requested Israel to halt its deliberate acts aimed at changing the features of the city. Israel has imposed its position by force, while the Palestinian position is based on legitimacy and international support. Resolving the Israeli-Palestinian conflict without settling the issue of Jerusalem is not feasible. Considering the position of both parties, peace is unattainable in the region in the foreseeable future.
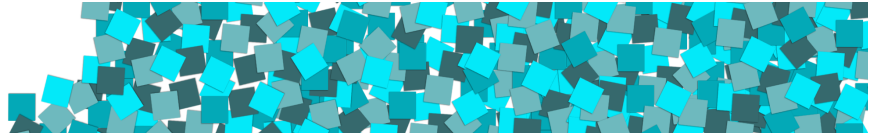
Keywords

INTRODUCTION

The issue of Jerusalem emerged in 1937, when the Peel Commission recommended partitioning Palestine into two states, Jewish and Arab, provided that the sacred sites remained under a British Mandate. The 1947 UN General Assembly Resolution 181, which divided Palestine into Arab and Jewish States, accentuated the international status of Jerusalem, taking into consideration the Islamic, Jewish and Christian interests in Palestine. After the establishment of Israel in 1948 and its occupation of Jerusalem, Israel considered the city its permanent capital and began building settlements, considered legitimate by consecutive Israeli governments. However, the Palestinians believe that

Jerusalem is the capital of their future state, and they continue condemning the Israeli settlement activities and the transformation of the city into a predominantly Jewish one.

Jerusalem has a significant status as it contains one of the holiest Islamic sites, the al-Aqsa mosque. However, it is part of the occupied Palestinian territories, and whatever is applied to the Palestinian cause (such as the illegitimacy of conquering land by military invasion, people's right to self-determination, illegitimacy of demographical and geographical changes made by the occupation forces) is also applied to the city of Jerusalem. International law does not recognise the use of force or military aggression to acquire land, and the Palestinian issue is considered a crucial element in the long-term conflict in the Middle East. UN resolutions preserve the legal character of the holy city as

an occupied territory, but initiatives of the international community trying to resolve the Israeli-Palestinian conflict have not addressed the sovereignty of Jerusalem, despite knowing that this issue represents the essence of the Middle East conflict.

This research includes two main parts. The first deals with the most important UN resolutions on Jerusalem and looks at the city within the Israeli-Palestinian peace process. The second part deals with the influential international stances taken towards Jerusalem by the United States and the European Union, in addition to the Arab League's position concerning the holy city.

UNITED NATIONS RESOLUTIONS

The United Nations' position on Jerusalem is reflected in several resolutions[1] which were issued to resolve the conflict over the city. Some include the internationalisation of the city and others focus on its division. The Palestinians considered the UN resolutions unreasonable and unfair towards their right over Jerusalem as the future capital of the Palestinian state (Saleh, 2012). However, the United Nations confirmed that the Fourth Geneva Convention applies to all Palestinian territories, including Jerusalem.

Many resolutions have been issued by the UN and its special committees demanding Israel stop violation of international law in Jerusalem (Musallam, 1973). The UN resolutions have condemned the Israeli attacks against the Islamic and Christian holy sites and the expulsion of Palestinians from the city. International symposiums have repeatedly called for respect towards UN resolutions, which reflect the spirit of the international community and recognise the inalienable rights of the Palestinians, including the right to self-determination, the right of return and Jerusalem as their capital (Al-Farra, 2008).

The conflict of sovereignty over Jerusalem clearly appeared after the issuing of UN General Assembly Resolution 181, in 1947, which suggested the partition of Palestine into two states, Arab and Jewish, with Jerusalem remaining under international trusteeship (Thorpe, 1984). This was the first UN resolution dealing with the Palestinian issue. Under this resolution, an international trusteeship council was to be established as the administrative authority on behalf of the United Nations in Jerusalem (Qaddumi, 2012). The trusteeship council was authorised to appoint a governor for Jerusalem who would be accountable to the council, to be selected on the basis of their special qualifications and skills, regardless of nationality, as it would be
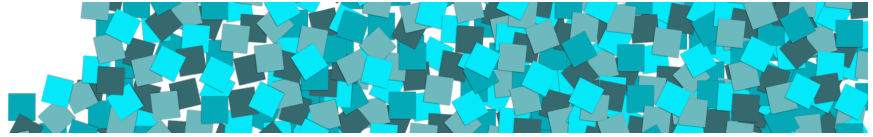
the person representing the United Nations, so communicating directly with the international community and dealing with foreign affairs issues. The governor could permit and prevent visitors entering the city, build new sites for worshippers from different faiths, and also resolve the differences between all parties in Jerusalem, but could not be a citizen of either state: neither Jewish nor Palestinian (Al-Kamli, 2012).

The UN Security Council resolutions on Jerusalem in 1948 varied between calls for cessation of strikes, truce and cease-fire, including disarmament of both parties, and preservation of holy sites and protection for freedom of worship. However, those calls were violated then and later. The UN documentation commission prepared a project, based on the partition resolution 181, to establish operational procedures for the situation in Jerusalem. The project was presented to the UN General Assembly at its fourth session in 1949. It divided the city into Arab and Jewish areas. Each party would administer its area and maintain the city as a neutral and disarmed zone, not being the capital for either party. The project also called for formation of a general council for the entire zone and development of a special system for the holy sites. However, the holy places located outside Arab and Jewish areas were to be supervised by a representative from the United Nations (Qaddumi, 2012).

Following its establishment in 1948, Israel confirmed, in a letter to the UN Secretary General, its readiness to implement UN Resolution 181. This decision revealed Israel's implicit recognition of UN sovereignty over Jerusalem and that the conflict with the Palestinians would only be solved through the United Nations. Nonetheless, the Israeli approval of the UN resolution only lasted for a short time, with the Israeli Knesset issuing a resolution in 1950 to transfer the capital of Israel from Tel Aviv to Jerusalem (Qaddumi, 2012).

After the 1967 War and the Israeli occupation of Gaza and the West Bank, including East Jerusalem, the UN General Assembly took the lead by adopting resolutions concerning Jerusalem, while the Security Council delayed its resolutions. The General Assembly issued its first resolution, No. 2253 on 4 June 1967, affirming its concern over the Israeli procedures in East Jerusalem aimed at introducing demographic changes in the city. Then the UN Security Council issued its first resolution concerning Jerusalem, No. 252 on 21 May 1968, which condemned Israel for not abiding by the General Assembly resolutions. The Security Council's well-known resolution, No. 242, issued on 22 November 1967, did not mention Jerusalem. Moreover, the Security Council Resolutions 250 and 251, issued in 1968, only requested Israel to stop military parades in the city. Therefore, the first Security Council objective resolution

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1   UN Official Website, Documentation Centre, www.un.org/documents

on Jerusalem was No. 252 issued a year after the Israeli occupation of East Jerusalem.

The resolution stressed a just and durable peace in the city, rejecting land confiscation through military raids and considering Israeli activities, including occupying Palestinian land and properties, illegitimate, and confirmed that such transformation of the city did not change its legal status. The resolution called on Israel to stop all activities which were intended to change the status of Jerusalem. In July 1969, the United Nations adopted Resolution 267, demanding Israel implement Resolution 252. Later, in September 1969, UN Resolution 271 was issued to condemn the crime of Denis Michael Rohan, an Australian Jew, who set fire to the al-Aqsa mosque in Jerusalem. This resolution demanded Israel abide by the Fourth Geneva Convention and recognise the Islamic Council and its plan to maintain and repair the Islamic holy sites (Mslet, 2006). Another UN resolution, No. 298, was issued in September 1971 in support of the previous resolutions and considered the Israeli demographic and geographic transformation of Jerusalem illegitimate (Shaban, 2012).

Following Israel's occupation of East Jerusalem in 1967, which unified the city under its sovereignty, several UN resolutions were issued demanding Israel reverse its policies and stop its illegal activities. Despite the international community's condemnation of these violations, Israel continued to impose 'facts on the ground' as impediments towards any international initiative or peaceful solution in Jerusalem (Al-Ashaal, 2011).

Since 1995, several UN resolutions have not been put into effect because of a US veto against draft resolutions submitted to the Security Council. The US used the veto on 17 May 1995, 7 March 1997 and 21 March 1997 against draft resolutions condemning Israel and confirming that its occupation of Jerusalem was illegal and calling for an end to the Israeli confiscation of land in Jerusalem, considering such activities violations of the Fourth Geneva Convention. The US vetoed these resolutions even though it accepted similar resolutions that were combined with new articles calling for political settlements and negotiation between the two parties. Since then, the US has adopted the same policy. Accordingly, Security Council resolutions have only called for cessation of incitement, terrorist activities, and violence, taking into consideration the Israeli security requirements and condemning the violent actions that take place in Jerusalem, regardless of the perpetrator or the motivations behind the actions (Shaban, 2012).

Since its occupation of Jerusalem, Israel has built many settlements, annexed areas from the West Bank and attempted to take control of Muslim holy sites (Abu-Amer, 2009). Israel accelerated its activities to create new 'facts on the ground' by building settlements, opening tunnels, and putting up the so-called 'apartheid wall' in order to reach its objective, in 2020, of expanding Jerusalem as the great capital of Israe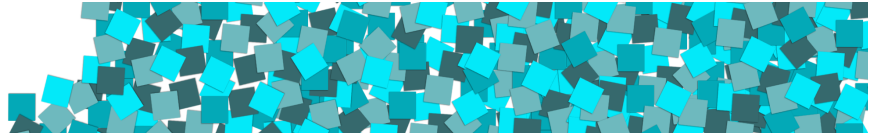l (Qaddumi, 2012). The United Nations committee on exercising Palestinian inalienable rights expressed deep concern over Israeli policies to legitimise the settlements in the city. The committee affirmed the illegality of construction and expansion of settlements in the occupied Palestinian territories, including Jerusalem, according to Article 49 of the Fourth Geneva Convention, the UN resolutions, and the advisory opinion of the International Court of Justice on the apartheid wall in 2004 (Al-Quds Newspaper, 2012).

ANALYTICAL PERSPECTIVE

The UN General Assembly Resolution 181 placed Jerusalem under international trusteeship to develop the city, as it includes holy sites for Muslims, Christians and Jews. The internationalisation was to include the entire city, including the Old Quarter, and the surrounding villages that were identified on a map attached to the partition resolution. However, the international trusteeship was not established because Arabs and Muslims opposed the internationalisation of Jerusalem. They believed that Jerusalem was an occupied Palestinian city and thus internationalising it was equivalent to denial of Palestinian ownership of the city. In addition, the city had known stability and been a sanctuary during the time it was ruled by the Arabs. In contrast, Israel accepted the internationalisation of the city, until it seized it by military means and then declared Jerusalem as its eternal capital, refusing any calls for internationalisation. Israel's standpoint was based on alleged historical rights over the city (Abdul-Salam, 2012).

Israeli forces occupied West Jerusalem in 1948 and occupied the East in 1967. In 1980, Israel declared the entire city as its only capital. This action was considered a challenge for the international community and a violation of the principles of international law that all the countries had agreed to respect (Dugard, 2011). Israel was taking such actions to gradually secure its sovereignty over Jerusalem as a fait accompli (Palestinian Media Centre, 2012). Later in 1980, the UN Security Council adopted Resolution 478, which strongly criticised Israel for considering Jerusalem its capital, stating it was inadmissible (Al-Quds International Association, 2007)

Some UN resolutions asserted the inadmissibility of the occupation of territories by force and the invalidity of Israeli annexation of Jerusalem, thereby warning Israel against any geographical or demographical changes in the city. Other resolutions considered Israeli activities in Jerusalem as aggressive acts that jeopardised the peace process in the Middle East. Furthermore, international law restricts Israel as an occupier state from making changes to the legal system in the occupied territories, except as required by temporary security requirements, with the provision that the occupier should not confiscate or destroy private prop-

erty. According to the Fourth Geneva Convention, the occupation authorities must maintain the unity of the occupied territories, minimising changes to its nature as much as possible (Al-Ashaal, 2011).

In fact, most resolutions on Jerusalem fall within Article 103 in Chapter VII of the UN Charter, which confirms that UN members have to carry out their obligations under the Charter before other obligations under international agreements. This means the Security Council resolutions are binding to all state members and these obligations take priority over other obligations. Accordingly, Israel's obligations towards the UN Charter should be respected and have priority over Israeli domestic commitments, particularly with reference to Article 25 of the Charter which states that UN member states must accept and implement Security Council resolutions. Thus, UN Security Council Resolution 242, on the withdrawal of the Israeli forces from the territories occupied in 1967, including East Jerusalem, should be implemented by Israel (Qaddumi, 2012).

UN resolutions have condemned Israeli illegal activities in Jerusalem and demanded the eradication of administrative and legal procedures that affect the historical status of the city, including confiscation of land and deportation of Palestinians. The resolutions called for Jewish settlements in Jerusalem to be dismantled, and for displaced Palestinians to be allowed to return to Jerusalem. However, Israel succeeded in excluding any role for the United Nations, singled out the Palestinian Authority, and imposed its strategy by force. This is contrary to international law. In fact, the UN resolutions concerning Jerusalem are unequivocal as they consider it an occupied Arab territory (Faour, 1995). They confirm the illegitimacy of Israeli measures that changed the geographical and demographic status in the city and consider Israeli sovereignty in Jerusalem as a violation of the Geneva Conventions of 1949 (Al-Ashaal, 2011). These resolutions asserted the invalidity of Israel unifying Jerusalem and carrying out these activities in the city (Hussein, 2012).

UN resolutions on Jerusalem cannot be implemented due to Israeli rigidity and rejection and their not being bound to chapter seven of the UN Convention. Successive Israeli governments have refused to receive any international investigation committee on issues on Palestine and Jerusalem. Israel refused to receive the Jewish judge Richard Goldstone and his committee regarding the attacks on Gaza in 2008/2009 and also refused to receive the Jewish professor Richard Falk, the UN Special Rapporteur, to investigate human rights violations in the occupied Palestinian territories. Since 1970, Israel has prevented the UN permanent committee of the Palestinian people's rights from investigating Israeli acts in the occupied territories, including Jerusalem. Thus, the UN resolutions on Jerusalem were undermined and ignored by Israel (Shaban, 2012).
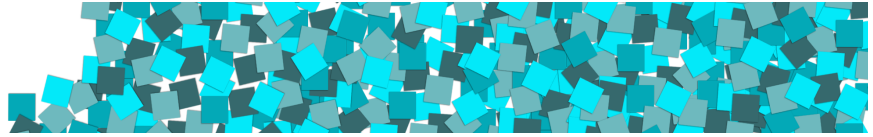
JERUSALEM IN THE ISRAELI-PALESTINIAN PEACE PROCESS

The United States implemented a strategy allowing Israel to present itself as an influential state in the Middle East that is able to normalise its relations in full cooperation with Arab countries in the region. This is because Israel is a close ally and protects US interests in the region. The Camp David peace agreement between Egypt and Israel was signed, in 1978, after extensive negotiations in the aftermath of the 1973 War. Other peace agreements were signed with Arab countries, but the most important was the Oslo Agreement signed between Israel and the Palestinians after tough negotiations held in Oslo in 1993 (Abdul-Salam, 2012).

The matter of Jerusalem was been brought up repeatedly by the Palestinian negotiating team ever since initial negotiations began, although the Israeli team insisted on excluding residents of Jerusalem from being members of the Palestinian delegation at the Madrid Peace Conference in 1991. The disagreement over bringing up the issue of Jerusalem and its Palestinian residents continued during the secret negotiations in Oslo in 1993. Later, both parties agreed to postpone the issue of the city to the final stage of negotiations, on condition that the Palestinian economic, social, cultural and educational institutions functioning in the city would be maintained (Nofal, 2010).

The 1993 Oslo Declaration of Principles provided that final negotiation issues between Israel and the Palestinians would include the outstanding issues of Jerusalem, Palestinian refugees and Israeli settlements. This means the issue of Jerusalem was deferred to a later stage of the negotiation process (Abdul-Hadi, 2007). Legally, this was an Israeli and Palestinian commitment not to implement any measures in Jerusalem that would oppose the agreement. Later, decisions were taken by Israeli authorities that involved confiscating land and changing the geographical and demographic nature of Jerusalem. In this context, some scholars differentiate between sovereignty and religious law of the city, as Israel and the US try to give special status to Jordan to supervise the Islamic holy sites, but this cannot give Jordan sovereignty over Jerusalem since it is an occupied Palestinian city (Abdul-Salam, 2012).

The position of Israel was completely opposed to that of Palestine in the final stage of the peace process. Meanwhile, Israel continues its confiscation of land, construction of settlements and insists on its sovereignty over Jerusalem. Israel has introduced new political terms such as Undivided Jerusalem, Eternal Capital of Israel, and Greater Jerusalem. Since the signing of the Oslo Agreement, Israel has confiscated more land under various pretexts, expanding Jerusalem and bringing it under full Israeli control, imposing a de facto situation in Jerusalem, preventing the Palestinian negotiating team from finding anything to ne-

gotiate over. However, the Palestinians insist that it is the capital of their future Palestinian state. Leaders of the Palestinian Authority propose that Jerusalem contains two capitals, one for the Palestinians and another for Israelis, with special arrangements for holy sites (Nowfal 2010).

INFLUENTIAL INTERNATIONAL POSITIONS

The United States

The position of the United States on Jerusalem differs from other countries in the world due to its preconception of the conflict and its bias in favour of Israel's position (Al-Shanty, 1997). The US position can be summarised as follows:

Firstly: The Importance of Jerusalem

The United States considers Jerusalem a sacred city for the three main religions in the world, Islam, Judaism, and Christianity, which includes the world's most holy sites. From a legal perspective, the US believes that East Jerusalem was occupied by Israel in 1967. Therefore, it is subject to the occupier's military law, but no changes should be made in the city that could affect its legal status. Consequently, the changes made by Israel are illegal and do not represent a legal precedent for the final permanent status of the city. The US has been interested in keeping the city united with joint Arab and Israeli supervision over holy sites. However, the US believes that sovereignty over Jerusalem cannot be discussed before multilateral negotiations between Israel and Arab countries take place in the final stage of negotiations: any arrangement should be reached through direct negotiations based on UN Resolution 242 and the principle of land swap where possible. Hence, the US position does not examine the sovereignty over Jerusalem and leaves this matter to be negotiated through the peace process despite all parties agreeing that East Jerusalem is under Israeli occupation (Abdulah, 1990).

Secondly: Jerusalem is the Undivided Capital of Israel

President Reagan's Administration abstained, in 1980, from voting on UN Security Council Resolutions 476 and 478, resolutions which condemned Israel for declaring Jerusalem its undivided capital and considered this declaration a violation of international law. Although East Jerusalem was considered an occupied territory, the Reagan Administration decided to move the US embassy to Jerusalem and regard the city as the undivided capital of Israel, which would in effect mean its sovereignty over the entire city. This step earned Reagan great support from Israelis. This was a significant transformation of US policy towards the conflict in the Middle East. In 1992, during the Bush Administration, the US Congress stressed the importance of preserving an undivided Jerusalem under Israeli sovereignty, with the right of access to the city for worshippers from different religions (Hussein, 2008).
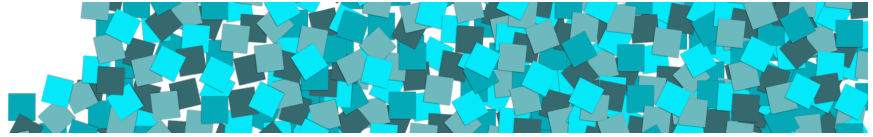
Thirdly: Congress Decision to move the US Embassy to Jerusalem

The US Congress passed a decision on 13 October 1995 to move the US embassy to Jerusalem, based on the fact that every state in the world has a capital and Jerusalem is the capital of Israel. The Congress decision was due to the Israeli interest in making Jerusalem its capital, with the Israeli presidential headquarters, the Knesset, the Supreme Court and other social and cultural institutions being located in the city. Another pretext given by the Congress was that while the city had been divided from 1948 to 1967, with Israelis not allowed to visit the holy sites in the eastern part it later became an undivided city under the Israeli authorities (Abdul-Salam, 2012) For the Palestinians, this decision is unacceptable and a breach of international law. In addition, each country has the right to choose its capital city as long as it is in the national territory. According to UN resolutions, Jerusalem is an occupied Palestinian city, and therefore the occupiers cannot claim sovereignty over the city under any circumstances. According to international law, confiscating land is prohibited, thus Israeli activities and legal presence in Jerusalem are not to be taken for granted (Faour, 1995).

The European Union

Taking into consideration the significance of Jerusalem for European countries, their positions differ on this issue. However, there is a shared stance among EU countries based on their reluctance to acknowledge Jerusalem as the capital of Israel, and their affirmation of the need to solve the conflict through negotiations between the two parties. The EU position on Jerusalem cannot be separated from its general attitude towards the Arab-Israel conflict (Al-Sharq News, 2010), and its approach towards Jerusalem is encouraging in comparison with the US position. The EU as a whole emphasises the need to establish a Palestinian state with East Jerusalem as its capital, but individual European countries maintain different positions (Abu-Hasna, 2012).

Most European countries supported UN Resolution 181. They neither accepted the illegal Israeli activities there nor considered Jerusalem as its capital. European countries supported UN Security Council Resolution 242, unanimously adopted by the Security Council, which demanded Israeli withdrawal from territories it occupied by

military force in 1967, including East Jerusalem. The reso-lution required Israel stop activities that would influence the outcome of the final status negotiations on Jerusalem. Nonetheless, the position of European countries changed following a statement made by the secretariat of the Vatican on 6 November 1969, which called for the Pope not to recognise the international status of the city. The statement affirmed the special religious status of Jerusalem under international trusteeship and the appropriate protection of holy sites. It also stated that representatives of the Jewish, Christian, and Muslim communities residing in the city should administer the Old Quarter, the historical site, under Israeli supervision. This was a major shift in Europe's position on Jerusalem (Nofal, 2012).

There have been gradual changes in this position, particularly after the Euro-Arab dialogue which followed the 1973 War. In 1978, a joint statement was released by a General Committee of Dialogue, which demanded immediate cessation by Israel of any action that would lead to geographical or demographic changes in the occupied territories, including Jerusalem. The countries of the European Community issued the Venice Statement in 1980, emphasising the importance of Jerusalem for all parties. The Statement refused any unilateral initiative aiming at changing the status of Jerusalem, and stated that Israel should end the occupation of Palestinian territories, including the city. Some Arab countries considered the European position a major advance, while others believed it was not strong enough, especially regarding Jerusalem (Abu-Hasna, 2012).

The position of most European countries reverted after the Madrid peace conference in 1991. This was a result of Israeli inflexibility in dealing with the demands of the EU and the US rejection of any role for the EU in the peace process. The Israelis and Palestinians had also deferred the issue of Jerusalem to the final stage of negotiations, so the EU stance was that its status should be determined through negotiations and not unilaterally by either party. In 1995, the Europeans refused to participate in an Israeli celebration held in Jerusalem titled "Jerusalem, three thousand years". Representatives of the EU said that European participation in such a celebration could be interpreted as support for Israeli policy toward the city (Abu-Hasna, 2012).

The European Union criticised the construction of Israeli settlements in Jerusalem and refused to recognise it as the capital of Israel. It also continued to criticise Israeli activities there and called for an immediate halt to their provocative actions, especially the demolition of Palestinian houses and expulsion of their owners. A statement issued by the Presidency of the EU in July 2009 further criticised Israel for its actions in Jerusalem as contrary to

international law, saying they should be halted immediately, as they coincided with an increase in Israeli settlements that could jeopardise any chance for peace (Anba Moscow, 2012). The statement warned the Israeli authorities of their unfair and unacceptable actions towards Palestinian families in Jerusalem (Nofal, 2012).
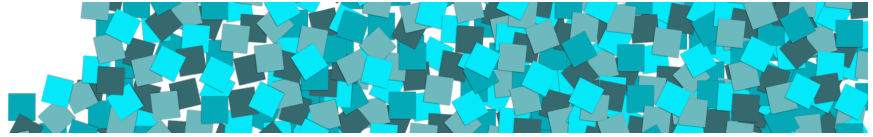
The Arab League

Arab countries vehemently rejected UN Resolution 181 because it divided Palestine and placed Jerusalem under International trusteeship. However, Jordan annexed the West Bank in 1950 and imposed new realities in East Jerusalem considering it part of the Jordanian Kingdom, rejecting any international sovereignty over the city. Jerusalem was divided between Jordan and Israel with neither of them having international legitimacy over the city. In 1967, Israel occupied the Gaza Strip, the West Bank and East Jerusalem and declared the city its undivided capital, transferring government institutions to the city. Israel promised to ensure protection of the holy sites and to give access to worshippers, but applied Israeli law throughout the city (Qaddumi, 2012).

Arab states rejected the Israeli occupation of Jerusalem[2]. However, despite the official Arab position of condemning the Israeli activities and attacks against the Islamic holy sites, they failed to undertake effective action to curtail these attacks (Arabic News, 2012). The Arab League repeatedly confirmed that Arab states would not, under any circumstances, recognise the legitimacy of the occupation or actions taken by Israel which were designed to change the legal status and geographical or demographical composition of the city (Shaban, 2012). In addition, the Arab League has regularly demanded actions by the international community to stop Israeli actions against Islamic sites and to bring forward a solution to the issue of Jerusalem through negotiations (Nofal, 2012).

CONCLUSION

Palestinians are determined to remain in Jerusalem and to preserve its historical and religious status. Arab states and the Muslim world in general support the Palestinian position. They consider UN Resolution 181 as a starting point for the establishment of an independent Palestinian state. The same resolution led to establishment of the state of Israel in 1948, but the annexation of Jerusalem in 1967, which gave Israel full control over the city, is considered a challenge to international legitimacy and contrary to the

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2 The 24th Arab Summit in Qatar in 2013 released a declaration appealing to the Palestinian people to continue to resist Israeli occupation and establish an independent Palestinian state with sovereignty and its capital in East Jerusalem.

provisions of international law. UN resolutions condemned the annexation, called for Israel to dismantle settlements in the city, and considered invalid all the administrative and legislative Israeli actions to change the legal status of Jerusalem.
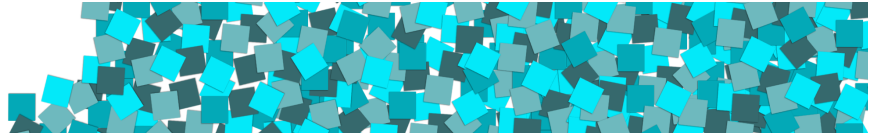
The international community has come up against violations of international law by Israel, since it defies UN resolutions and refuses to negotiate its claim of Jerusalem as its eternal capital. Though not complying with UN resolutions, Israel is supported by the US as a permanent member of the UN Security Council, which is continuing to thwart any new resolution on Jerusalem, and claims that the issue can only be resolved through the peace process. Though the US tries to show impartiality in some of the issues concerning Jerusalem, its policy is characterised by favouritism towards Israel. In the meantime, the European Union considers the city has a special legal and political status as outlined in UN Resolution 18. It believes that achieving a peaceful solution to the Israeli-Palestinian conflict would bring an end to the political and religious concerns of both parties over the city. Thus, there is potentially a greater role for EU diplomatic action in the Middle East. Yet the political discourse of Arab countries towards Jerusalem remains unchanged, imbued with rhetorical statements that are full of moral and compassionate appeals to the international community and the world to save Jerusalem.

Taking into consideration the Islamic, Jewish and Christian interests in Palestine, along with UN resolutions, peace initiatives, and the Israeli and Palestinian positions on Jerusalem, it is possible that both parties could reach a solution if Israel were to comply with UN Resolution 181. This would give Jerusalem a special legal and religious status under the supervision of the international community, which would be a major contribution towards sustainable peace in the Middle East. ■

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Journal of **Conflictology**

ARTICLE

Migingo Island: Kenyan or Ugandan Territory?

Jack Shaka

Abstract

The Migingo Island territory dispute has been brewing since 2004. Kenya and Uganda both claim ownership of the Island as the residents continue to suffer. Police forces from both countries patrol the island while ways to resolve the dispute are sought. The population is mainly Kenyan and many of them have been arrested and detained for fishing in Uganda's territorial waters. Diplomatic efforts have been unsuccessful, and during voter registration in December 2012, Ugandan officials stationed on the Island pointed their guns at the Kenyans who were protesting against police interference in the process. One year on, the tension is still rife. As a peace and conflict specialist in East and Central Africa, I have had a front row seat in the theatre of incongruity that is Migingo. The media have been playing their part in reporting the events but some of them have been biased. This article maps, through the eyes of a peace and conflict worker in the region, the dispute, potential effects of a war and the attempts made by Kenya and Uganda to break the impasse and reach an amicable solution.

Keywords

INTRODUCTION

The scene is Lake Victoria in East Africa. The lake belongs to three countries: Kenya, Uganda and Tanzania. This is the second largest freshwater lake in the world and a source of income for many East Africans. There are many islands spread all over the lake belonging to all the three countries, but the bone of contention is a tiny island referred to as Migingo. The Island, with about 1000 inhabitants is causing souring of diplomatic relations between Kenya and Uganda with both claiming ownership.[1] This has been going on since 2004 when Uganda deployed forces and, in 2009, imposed a special tax on the Kenyan fishermen. This resulted in a huge diplomatic spat between the two countries.[2] The key documents being consulted in the dispute by the two governments are:

- The British Order in Council of 1926, that established the current Uganda-Kenya boundary. This document has the coordinates, boundary pillars and natural features of Migingo Island.[3]
- Schedule 2 of the 1995 Uganda Constitution. This was annexed from Schedule 1 of the 1967 Uganda Constitution (1995).[4]
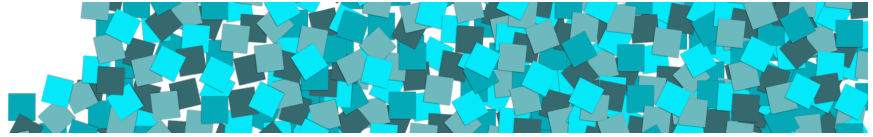- The Kenya Colony and Protectorate (Boundaries) Order in Council 1926.[5]

1. K. Sing'Oei (2009).
2. J. Gettleman (2009).
3. *The Independent*, 28 April 2009.
4. Ibid.
5. Ibid.

- Kenya Legal Notice No. 718 of 1963, Schedule II Boundaries, Part I, the Districts, 37. Busia District, pp. 290.[6]

In March 2013, a meeting of government ministers from both sides did not yield much in terms of results but rather fueled the tension. Other attempts by both parties to reach an amicable solution had failed, with both sides taking a firm stand. Kenyan fishermen were being harassed and arrested in Migingo by Ugandan armed police who had been posted there since 2004. Uganda went ahead and hoisted its flag to show who was in control of the Island.[7] The underlying dispute is over fishing rights in Lake Victoria, since Kenya exports more fish than Uganda, despite controlling a smaller percentage of the lake. Over the years, numbers of fish in the lake have declined and the blame is being put on the Kenyan fishermen.[8]

There were simmering tensions on the island after Kenyan policemen were deployed to check on complaints by Kenyans of hostile treatment by the Uganda Police Force. The stage was set for a cross-border war, but civility prevailed. Kenyan fishermen felt abandoned and neglected by their government, considering that the Ugandan government had taken away their source of livelihood. They were being arrested for fishing on Ugandan territory. The issue was brought to the floor of the National Assembly in Kenya and it was made clear that the Island has been part of Kenya since before independence in 1963. Uganda however, makes the same claim. The leaders from both sides seem to be on amicable terms, considering that Ugandan President Museveni managed to convince the African Union Summit in Addis Ababa, in April 2013, that the International Criminal Court is the enemy of Africa and that Uhuru Kenyatta should be tried in Kenya and not at The Hague.

POTENTIAL EFFECTS OF THE DISPUTE

In the case of a full-blown war between the two countries as a result of souring diplomatic ties, Uganda might decide to route most of its goods through the port of Dar es Salaam, at a higher cost: since the Kenyan borders would be closed, there would be no access to the port of Mombasa in Kenya. Apart from this, other countries that depend on the Kenyan port to transport their goods through Uganda, such as Congo, Rwanda and Burundi, would be greatly affected. This was evident during the ethnic violence in Kenya in 2007/8 when the borders were closed and the economies of Rwanda, Burundi and Uganda faltered, since goods from Kenya were not making their way there.

The cost of fuel skyrocketed overnight and stayed high for months. This is a situation that no country wants to face. There are thousands of people with jobs in these countries and it will be a great tragedy if a war breaks out since there will be an influx of refugees to other East African Countries. As a result, most of the labor force would be affected by a war; businesses would collapse thereby affecting the GDP of the countries in the region. The economic recovery of these countries would take decades if such a thing happened. Kenya is still emerging from the economic meltdown after the ethnic violence that rocked it in 2007/8.

The uncompromising stances taken by Kenya and Uganda in the dispute pose a threat to the dreams of East African Integration that the East African Community is working to realise.[9] It might also affect trade agreements and tariffs in the region since most will be rendered useless once the borders are closed. It is prudent to point out that leaders from both countries have reiterated that the two countries cannot go to war over a one acre piece of rock. But let us not forget that people have gone to war for far less substantial reasons, all over the world.[10]

CALLS FOR CALM AND DIPLOMACY

In February 2013, Prime Minister Amama Mbabazi of Uganda called for calm in discussing matters concerning the disputed Migingo Island. He went on to say that the matter was being looked into and there was no need for the two nations to go to war over something that can be resolved. The former Prime Minister of Kenya, Raila Odinga, expressed the same sentiments in February 2012 when he received President Yoweri Museveni in Kisumu City in Kenya.[11]

So controversial is the issue that the presidential candidates for the March 2013 Kenya Presidential Elections were asked whether they were aware of the existence of a one acre piece of land that belongs to Kenya but is occupied
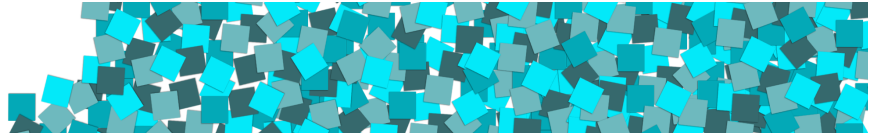
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6. Ibid.
7. E. Kisiangani (2011).
8. *The Independent*, 10 March 2009.
9. Panapress, 26 March 2009.
10. D. Warui (2013).
11. F. Kilonzo (2013).

by Uganda. Kenyans wanted to know if the candidates were aware of the problems they faced and if they were abreast with the developments around the country, and what solutions they had to mitigate such issues. Voter registration on the disputed island in December 2012, came to a halt after a row ensued between the Ugandan Forces and Kenyan fishermen. The voter registration clerks had to run for safety when the Ugandan Forces raised their guns and pointed them at the protesting Kenyans.[12] This happened despite the calls for calm and diplomacy between the two parties in December 2012 and February 2013.

CONFLICT SENSITIVE MEDIA REPORTING

Media all over the world have covered this conflict since 2004. The reporting has sometimes been sensational, depicting Kenya and Uganda as being on the verge of war. A scan of the reports over the years shows that the media fueled the situation with a reporting style which magnified the whole issue.

Conflict-sensitive reporting is something that journalists and netizens need to learn or remember as they cover issues of a delicate nature. As much as journalists are on the spot to report events as they unfold, they need to remember peace journalism can only be realized if they exercise conflict-sensitive reporting. Biased reporting on Migingo Island has been common since 2004. Some media articles are pro-Kenya while others are pro-Uganda to an extent that finding one that is really objective is hard. Most of them have been quick to analyze and give their opinion on who actually owns the Island, thereby exacerbating the dispute.

Social media platforms such as Twitter and Facebook took the issue to a new level. Presidents of the two countries were abused and accused of being thieves. The plight of the arrested fishermen was brought to the fore and people were outraged. In Kenya's Kibera slum, the residents took to the streets and uprooted the railway line, crippling the rail network system, just to show how outraged they were. This is yet to stop.

THE WAY FORWARD

The world is watching, and how the two countries resolve the dispute remains to be seen. At the same time, the future of the East African Integration is at risk if things do not go well. Security forces from the two countries are co-managing the island awaiting resolution of the dispute, which has gone on for close to a decade now. The situation is still tense and an amicable solution needs to be found, and fast. The East African countries need each other now more than ever since they share borders and trade relations, which are vital to the growth of their economies. Taking too long might result in the dispute growing into something bigger, which will be harder to deal with in the future.

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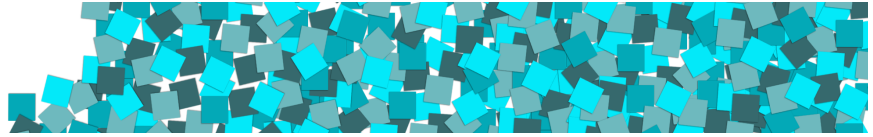
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Journal of Conflictology

ARTICLE

Equatorial Guinea: An Eternal Present

Eduardo Soto-Trillo

Abstract

The author analyses the current situation in Equatorial Guinea, the recent effects of the oil exploitation and President Teodoro Obiang Nguema's preparation of his son, Teodorin, as his successor, which might be seriously challenged.
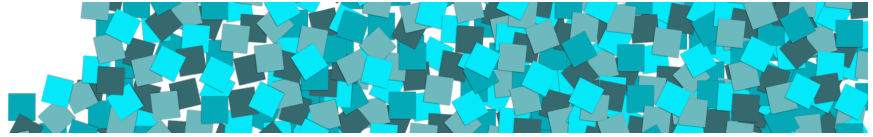
When my father and I travelled throughout Equatorial Guinea ten years ago to rekindle his idyllic memories as a colonial medical doctor and confront them with the reality of a then emerging oil power, we could hardly have expected what this country would become. Back in the country, to my astonishment, the miracle was dazzling. Giant concrete towers, gazing like alien idols at the imperturbable ocean, springing up from among the remaining beautiful rationalist-style houses built by the Spanish settlers more than a half a century ago. Thousands of immigrant workers, from neighbouring countries and overseas, feverishly moving between construction sites. Beyond, the still majestic rain forest shining forth, pierced with immaculate roads, including an unimaginable highway. Somewhere, a hydroelectric dam supplies the general power network with sustainable energy. Glossy shopping centres, brand new cars, luxurious hotels, crowded planes: a new promising world which came in a rush for the Guinean people. The traditional postcard of poverty and abandonment is disappearing thanks to what is a surprising government policy for African standards: investing the income from its natural resources in improving the living conditions of its people.

Nonetheless, such a dramatic current transformation was never in the mind of the dictator Teodoro Obiang Nguema when endless sources of oil were found; we were simply witness to his indifference. The change came from the United States. The strategic relevance of the country for the US multinationals, together with the continuous looting by the Obiang family without any compensation for the local population, could only lead to dangerous instability. Not long after our departure, a Senate committee[1] brought to light, in 2004, that he had funds which were close to 60% of the Equatoguinean GDP coffered in the notorious Riggs bank, experts in international money laundering. Soon after, a mercenary incursion, supported by the exiled opposition, attempted to oust him. Yet with the help of his president friends, Mugabe from Zimbabwe and Dos Santos from Angola, the dictator was able to stifle the coup.

To avoid increased notoriety, the Obiangs saw themselves forced to invest in the country a proportion of their profits from international tenders, with lucrative opaque commissions set aside for the family. It was definitively a less profitable form of corruption but it was doubtless a more presentable one in the face of international public

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1 The head of this committee was Senator Carl Levin.

opinion, and also more in accordance with current practice in the developed world. Teodoro Obiang accepted this and so unleashed the modernising fury in Equatorial Guinea. There arrived new multinationals for public works, this time related to other friends of the dictator, such as France, Mubarak´s Egypt and the King of Morocco. The American plan was to create an African oil emirate, similar to those established by the British Empire in the Persian Gulf, to continue exploiting their oil. The people (the population of Equatorial Guinea is estimated to be around 700,000) would have considerable economic privileges but almost nonexistent individual rights, and were effectively ruled by an authoritarian dynasty easily manipulated by the West.

However, in April 2012 something unexpected happened. With the accusation of embezzlement of public assets, a French judge ordered the arrest of the heir designated by Teodoro to succeed him, his son Teodorin. His numerous properties in France were seized. This was a very serious setback from his traditional ally, whom he had always favoured with important monopolies in telecommunications, banking and petrol distribution. France has been even in charge of training the security forces. The reasons for this move are unclear, but in Paris they also seem to have a long-term plan for Guinea, which does not include Teodorin, an unpredictable spoilt child whose latest whim was the million-dollar purchase of some Michael Jackson memorabilia. The atmosphere is highly tense as President Obiang is very sick, with prostate cancer. It is said in Malabo that doctors give him, at most, two more years. Obiang´s stubbornness in defending his eldest son, and the need to count on popular support in case of external questioning, may also have accelerated the public investment fever and a certain interest in those most deprived. New contracts contain clauses compelling multinationals to employ Equatoguineans and to develop social projects.

The situation looks like a Shakespearian tragedy. Teodoro Obiang himself acceded to power with a military coup, deposing his bloodthirsty uncle, president Macias, whom he had executed after a trial without any fair trial guarantees. He has more than twenty sons from different women, but, according to the Fang tribal tradition, the only ones who really matter are those from his first wife, the ambitious Constancia, a real Lady Macbeth. The countless Obiang family assets come from corruption and extortion of international investors. Any serious business in Equatorial Guinea must have the support of, and the resulting percentage of pickings for an Obiang clan member. The international order to arrest Teodorin had all the impact of a bomb, bringing sudden uncertainty about the survival of the whole family after the President's death.
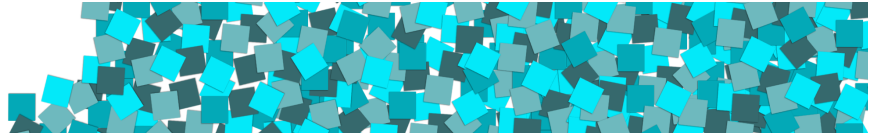
Other clan members with a better reputation, like his US-educated stepbrother Gabriel, could apply as alternative candidates with international support. They need to get rid of the undesirable elements so that nothing changes for the family business. A new, bloody, clan readjustment might be already secretly under preparation, with or without the involvement of the French.

Teodoro Obiang´s dictatorship record in human rights is no better than his uncle's. Elections are held periodically to comply with the formally democratic constitution, but their results are systematically manipulated. Last May, official results gave 99% of the vote to the President's party, the PDGE[2]. Most opposition leaders live exiled in Spain. There is just one legal opposition party, the CPDS[3]. Under the advice of the Spanish socialist party, CPDS participates in the electoral farce, allegedly trusting in a future democratic transition that never comes. Nevertheless, there could also be more obscure reasons that explain the strange interest of Spanish socialist leaders in colluding with Obiang's dictatorship. For some local intellectuals, financing of their party, or of themselves, should not be discarded. Whatever the case, the harassment and repression of any critic is still part of government policy and the consequences are serious: arbitrary detentions, disappearances, torture, murder... I remember very well Dr. Elías Mao, my father's classmate at university in Barcelona, and one of the very few black professionals who had survived the killings triggered after decolonization. Some months after our trip, he was murdered with impunity in an alleged traffic accident. Dr. Mao had been accused of informing the International Red Cross of the situation of political prisoners in Equatoguinean prisons. The latest known victim is Clara Nsegue Ayi, known as "Lola", a human rights defender from Mongomo, the home town of the Obiang family. She had recently dared to claim reparation for families of victims of the regime. Fear of reprisals maintains an environment of self-repression and mutual surveillance that works perfectly. No one talks openly. Obiang trusts that the spoils from the oil feast arriving in many Guinean homes will make them forget their right to decide who should rule the country. The key is to create, as soon as possible, a "good dictatorship".

Within this philanthropic plan, education is at the bottom of the list. Education produces conscious citizens who might claim their rights, a dangerous thing for the family in power. The state of public education continues to be at the level of the poorest African nations. The education provided by Catholic Spanish institutions, which serves around 30% of students, has been without funds for a year now since Spanish aid was cut off due to the economic crisis in the former colonial metropolis. Most of the population

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2 Democratic Party of Equatorial Guinea
3 Convergence for a Social Democracy

lives in dire poverty in rural areas within the continental zone. Villages comprise small wooden houses, with cultivation of subsistence agriculture and hunting still being the main source of protein for the people. There is no free public healthcare and life expectancy is 47 years because of malaria and other endemic diseases in Equatorial Africa. In bigger towns, the old colonial hospitals have been repaired but medical services and medicines must be paid for. Public health doctors are still professionals sent by the Cuban government, another proof of the flexibility of Teodoro Obiang in managing the country's affairs.

In the words of an old exiled opponent, Severo Moto, talking about Equatorial Guinea is talking about an "eternal present", which started in October 1968 with independence from Spain and the arrival in power of the first of the Mongomo saga, Macias Nguema. That continued with the appearance of the figure of the current president, Teodoro Obiang Nguema, in 1979. And it might well be perpetuated in the future by the crowning of ineffable Teodorin or another Obiang member. Ultimately, the United States and France, the main actors in the African chess game, with their pressure and schemes, both desire that such an eternal present should never end. It is an eternal present that remains extremely positive for the economic interests of their nations and businesses. Sadly, empowering the Equatoguinean people is not included in anybody's plans. It is a future that this amazing country still has to wait for.

Recommended citation

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Eduardo Soto-Trillo is a Spanish writer and international jurist who has considerable professional experience working for international organizations in conflict and post-conflict societies in Africa, Latin America and Central Europe. His main publications are: *Voces sin Voz*, Intermedio, Bogotá, 2002, on the Colombian FARC guerrillas; *Los olvidados*, Foca, 2004, on the postcolonial evolution of Equatorial Guinea; and *Viaje al abandono*, Aguilar, 2011, on the conflict in Western Sahara.

ARTICLE

Roadblocks to Peacebuilding Activities in Cyprus: International Peacebuilding Actors' Handling of the Recognition Issue

Bülent Kanol and Direnç Kanol

Abstract

In this paper, we argue that the strategy adopted by international peacebuilding actors for dealing with the recognition issue in Cyprus has created significant problems for implementing effective bottom-up peacebuilding activities. Rather than encouraging cooperation between the two communities, the 'do no harm' approach applied has strengthened the position of the ethno-nationalists who try to prevent cooperation beyond the Cyprus Green Line. We argue that this approach shows how international actors can be limited in comprehending and dealing with local problems, particularly when their official position is aligned with the official position of one side involved in the conflict. International peacebuilding actors can be much more effective if they thoroughly understand the root causes of conflicts and ensure they take a neutral stand before engaging in peacebuilding work in post-conflict regions.

Keywords

bi-communal activities, civil society organizations, Cyprus conflict, international peacebuilding actors, peacebuilding
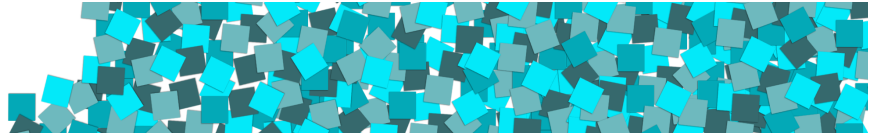
INTRODUCTION

Compared to the majority of studies related to peacemaking and peacekeeping, peacebuilding literature is mainly occupied with bottom-up rather than top-down conflict resolution strategies. Tracing the roots of this research shows how Galtung (1969) made a plea for concentrating on positive peace related not just to the absence of violence but also to the integration of human society. Davidson and Monteville (1981-1982) later concentrated on track II diplomacy, which includes interactions for conflict resolution between actors from the wider society; Boutros Boutros-Ghali's (1992) aim was to change structures in post-conflict zones, and Lederach's (1997) endeavour was to integrate the society as a whole into peacebuilding activities in order to transform conflicts in post-conflict societies.

Along with subsequent studies following the same line of reasoning, they are primarily occupied with culturally sensitive, everyday, bottom-up peacebuilding (Oda, 2007; Mac Ginty, 2008; Rubinstein, 1989; Roberts, 2011; Duffey, 2000; Mac Ginty and Richmond, 2013), considering civil society organizations as indispensable actors (see Marchetti and Tocci, 2009; Barnes, 2009; Paffenholz and Spurk, 2010).

These publications urge us to stop trying to introduce 'Westernized peace' or what the authors name 'liberal peacebuilding', arguing that we should instead create peacebuilding strategies by taking into account the cultural perspectives and the immediate needs of the societies in

conflict zones. The authors try to distance themselves from rational-choice approaches as they believe that societies are constructed in different ways in different places. Hence, it is very difficult to formulate universally applicable hypotheses. The predominant approach in peacebuilding literature is case-oriented, without generalising, rather than variable-oriented research (Ragin, 1997). This does not mean that the findings will not lead to general conclusions, but that the researchers are mainly interested in the internal validity of their research in each case. Case-oriented research aims to describe, explore and explain phenomena that may be solely of interest to the case under study, with inference as only a secondary issue. As in most experimental research, the general impact of variables can be better understood through meta-analyses and literature reviews. However, doubts remain whether generalizations are possible at all, as specific variables may not be relevant in different cases, or may have other effects.

Despite the advantage of in-depth analysis, peacebuilding scholars doing locally sensitive in-depth research cannot advance our knowledge much further than the suggestion that peoples' perspectives and needs should be taken into consideration during peacekeeping and peacebuilding processes. This simple argument creates doubts about the constructiveness of the results, when the conclusions are restricted to a simple and clear argument that is more of an assumption than a finding.[1] We argue that case-oriented scholars should now start to explore how specific, locally sensitive issues may reduce the effectiveness of peacebuilding activities. Although descriptive studies are effective in pointing out the need to take the 'local individual' seriously, we have reached a point where we should concentrate on determining which external factors can explain why the efforts of international peacebuilding actors may not be congruent with local needs. Only then can we understand exactly what diminishes the effectiveness of peacebuilding activities promoted by these international actors. This would enable us to move from simply criticizing liberal peacebuilding to suggesting how we can improve peacebuilding in general.

Autesserre (2011) argued that anthropological and constructivist research in peacebuilding neglected three research topics that are imperative to peacebuilding. Firstly, while bottom-up studies look at the interactions between various cultures and military peacekeepers, they fail to study how culture interacts with track II actors. Secondly, different types of activities, such as peacemaking, peacekeeping or peacebuilding, and local and external actors are studied separately and we lack an understanding of the interactions between them. Finally, our knowledge on the similarities between peace-builder strategies that use indigenous approaches to peacebuilding is lacking.
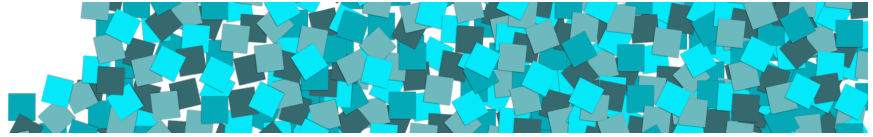
Along the lines of Autesserre's (2011) second point, this paper looks into the interaction between local and external actors. The research method and the question examined follow that of Denksus (2012) who advocated the use of in-depth analysis that takes into account the everyday challenges of peacebuilding organizations.

Among Turkish Cypriots, public opinion is divided with a majority preferring independence and seeing a federation only as a secondary option (Cyprus 2015, 2010). On the other hand, the Greek Cypriots who previously dominated political power try to prevent the recognition of the breakaway Turkish Republic of Northern Cyprus. Greek Cypriots prefer to maintain their territorial sovereignty and dominate political power in a unitary state (Cyprus 2015, 2010). Delicate issues such as property ownership (Gürel and Özersay, 2006; Loizides and Antoniades, 2009) keep the tension between groups alive. Amid the clear conflict between these two communities, civil society actors from both sides are engaged in peacebuilding activities. Our endeavour here is to understand how the international peacebuilding actors' handling of the recognition issue has affected the success both sides are achieving. We argue that the 'do no harm approach' adopted by these external actors in order to prevent any political risk for themselves has created a major problem for the civil society actors that try to consolidate peace in Cyprus. Following is a formulation of the argument, substantiated by a brief case study, and some conclusions.

INTERNATIONAL ACTORS' HANDLING OF THE RECOGNITION ISSUE AS AN OBSTACLE FOR PEACEBUILDING

There is extensive literature on the Cyprus conflict, however most research concentrates on Track I diplomacy (Yesilada and Sozen, 2002; Kyriacou, 2000; Eralp and Beriker, 2005; Schiff, 2008; Sözen and Özersay, 2007; Loizides and Keskiner, 2004; Souter, 1989; Bahceli, 2000). Recent publications argue that negotiations have failed or they should not have been the focal point for resolving conflict in the first place (Kanol, 2010; Turk, 2006, 2007, 2009). The writers argue that contact between individuals can reduce prejudice and create a feeling of "we", which is the way forward if a solution is to be found to the Cyprus problem (Turk, 2006, 2007, 2009; Trimikliniotis, 2007; Lönnqvist, 2008; Broome, 2004; Kanol, 2010; Anastasiou, 2002; Loizos, 2007; Hadjipavlou, 2004, 2007; Ladisch, 2007). Kanol (2010) argues that civil society holds the key to

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1 See Paris (2010) for an extensive critique of the deficiencies of the literature that criticizes liberal peacebuilding.

transforming negative attitudes towards the other community into positive attitudes, creating a "we" feeling. The full history of peacebuilding activities to date was covered by Hadjipavlou and Kanol (2008). Most activities took the form of problem-solving workshops (see Kelman, 1972 for a definition). These Track II workshops were complemented by Track III activities such as young people going to bi-communal camps or protest meetings. Recently, some organizations have also concentrated on peace advocacy in the form of bi-communal demonstrations and inside lobbying, which is one-on-one communication with the policy-makers.

Recent research on civil society and peacebuilding in Cyprus has found that the sensitivity of the recognition issue has been a significant obstacle to implementing effective peacebuilding activities. One research project implemented by the Cyprus Centre for the European and International Affairs states clearly: "by far the most important (and obvious) issue that hinders cooperation or even generates antagonistic behaviour is that of recognition" (Cyprus Centre for the European and International Affairs, 2011, p. 10). One of the findings from roundtable discussions with civil society members is that cooperation with the Turkish Cypriots is hindered in the Greek Cypriot community who fear that any collaboration may somehow lead to the recognition of the Turkish Republic of Northern Cyprus (TRNC) (Cyprus Centre for the European and International Affairs, 2011). The pressure on Greek Cypriot civil society usually comes in the form of 'naming and shaming', accusing those who cooperate in facilitating recognition of the breakaway region. The social pressure within the Greek Cypriot civil society is very strong: no one wants to be the proverbial 'black sheep', so people shy away from actively collaborating and working with the other community. This problem is exacerbated by the actions of certain groups in the Turkish Cypriot community (Cyprus Centre for the European and International Affairs, 2011).
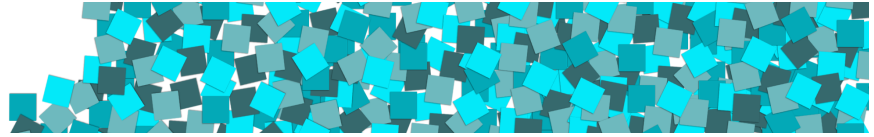
Donor funding for peacebuilding was found to be a double-edged sword (Paffenholz et al., 2010): while most peacebuilding activities would not have been possible without it, donor funding also contributed to the professionalization of peace work. This meant most social movements were transformed into non-governmental organisations, voluntary work came decreased, the social roots of the movements weakened and peacebuilding initiatives turned from grassroots cooperation into efforts for fundraising. The authors argue that the NGOs that managed to secure funding are led by an urban, educated middle-class which causes problems of social capital, ownership and legitimacy (Paffenholz et al., 2010). Unlike these general points, the recognition issue is case-specific. The focus here is on this issue, specifically on how the international actors handled it and how this had an impact on peacebuilding in Cyprus.

The Republic of Cyprus was founded as a power-sharing state between Greek and Turkish Cypriots as a result of the London-Zurich (1959) agreements which included Greece and Turkey as guarantors of the sovereignty, and the constitution of the Republic of Cyprus based on kinship. As the former colonial power in Cyprus, Great Britain acknowledged independence and it became a third guarantor power. Consociationalists argue that rigid proportionality, grand coalitions, cultural autonomy and minority veto ensure peace, democracy and stability in deeply divided societies (Lijphart 1969, 2004). The Republic of Cyprus satisfied all of these conditions (Yakinthou, 2009). The London-Zurich agreements, however, did not satisfy the Greek Cypriot community, 78.20% of the population at the time. A majority within the Greek Cypriot community was either in favour of unification with the 'motherland' or a unitary state. The Greek Cypriot elite were of the opinion that the corporate consociationalist system of the Republic of Cyprus gave too much power to the Turkish Cypriot community, which constituted only 18.13% of the population at that time. Lack of support for the power-sharing government soon created problems. The Republic of Cyprus has functioned without the effective participation of Turkish Cypriots since 1964. In 1974, after a coup led by the Greek military junta, Turkey responded and occupied about 37% of the island.

Agreements between the Greek Cypriot and Turkish Cypriot political elites failed to establish a viable common state and in 1983, Turkish Cypriots, supported by Turkey, proclaimed the Turkish Republic of Northern Cyprus as an independent state. To this day, no country except Turkey recognizes the breakaway region as an independent country. The Republic of Cyprus claims that Turkey is an occupying force and that TRNC is a puppet state of Turkey, demanding that Turkish soldiers leave the island. The majority of Greek Cypriots believe that the problem is the 35,000 soldiers still deployed in Cyprus, their inability to claim their properties occupied by Turkey and the illegal flow of Turkish immigrants to Cyprus. Turkish Cypriots on the other hand argue that the 'doctrine of necessity' implemented by the Republic of Cyprus has caused an 'invasion' of Greek Cypriots, leading to a unilateral transformation from a bi-communal to a monocommunal state. The majority of Turkish Cypriots believe that the Turkish soldiers ensure their security. While Turkish Cypriots are in favour of an independent state, federation is an acceptable second best solution. Greek Cypriots on the other hand prefer a unitary state. However, they claim they rejected the 2002 United Nations plan for settlement of the problem not because it proposed a federal state but because it was unfavourable towards the Greek Cypriot community.

On 11 November 2002, the United Nations launched the Annan Plan. A comprehensive proposal to settle the Cyprus problem, as a continuation of the top-level negotiations that had begun in late 1999 (Anastasiou, 2008), it foresaw a bi-zonal federation of the communities. After several revisions, the fifth draft was put to a referendum on

24 April 2004, with 65% of the Turkish Cypriot community supporting the plan and 76% of Greek Cypriots rejecting it. As approval depended on a simple majority of both sides, the plan was rejected. Some analysts suggest that the peace process was completely curtailed by the rejection of the Annan Plan by the Greek Cypriots and the ensuing stalemate in the negotiations between the left-wing leaders Mehmet Ali Talat and Demetris Christofias. But this idea may be erroneous due to the misconception that the peace process was a way of reaching institutional agreement on a one-state or a two-state solution. In reality, since the Turkish Cypriot decision to allow cross-border visits, during the Annan Plan process, varying degrees of relationships have been created between the communities. Although a substantial number of people still do not cross the checkpoints, and therefore are not exposed to contact with the other community, there is a growing number of people who – willingly or unwillingly – have had contact since the opening of the borders in 2003. Bi-communal activities, some funded by international organizations, have also increased as a result of the relaxation of border controls and the more positive environment. Nevertheless, there is no doubt that there is still a rigid psychological divide between the two communities and that and any positive effects of contact will only be seen over time.

In our opinion, when international actors – in this case, the UN, the EU and the USA – intervene in a reconciliation process without treating the two conflicting parties equally, they block opportunities for implementing peacebuilding activities. They are bound by a political stance which dictates they recognise just one side of the conflict. Since the Republic of Cyprus is 'legal' and the Turkish Republic of Cyprus is 'illegal', the UN officials in Cyprus are accredited by the Republic of Cyprus which is represented solely by the Greek Cypriots, who are only one side of the conflict. UN officials working to facilitate and provide conflict resolution services through the UN Good Offices mission are under constant pressure from the Greek Cypriot authorities to not get involved in any activity which might imply recognition of the Turkish Cypriot authorities or institutions. So, while the UN acknowledges the equality of the two sides, recognition is only extended to the Greek Cypriot government of the Republic of Cyprus This dilemma puts the UN in an awkward situation as a neutral actor supporting the peace building activities, whether through its Good Offices to facilitate the inter-communal talks or through the UNDP offices which provide funding for the peacebuilding projects operating at various levels and sectors on the island.
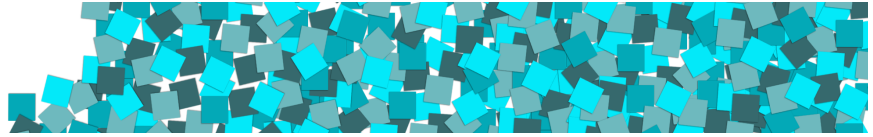
Organizations like the UN and the EU are bureaucratic institutions and the officials managing or overseeing peace building projects are often career-conscious and risk-averse, so reluctant to push the limits of their operations. This caution is usually disguised by certain not well-defined practises such as 'do no harm', which is conveni-

ently translated by officials as maintaining the current state of affairs. This then becomes a problem in itself, since the aim of peacebuilding is to transform a situation of conflict into one of reconciliation. In the case of Cyprus, there have been some exceptional occasions where UN and EU officials managed to find 'creative' ways to surpass the difficulties imposed on them not only by the Greek Cypriot authorities but also by their own political/legal frameworks. However, they had limited impact and were dependent on the competencies of the individuals in these positions and their in-depth understanding of the local context. In most cases, risk-avert officials adopt the 'do no harm' approach which simply means not granting permission for any bi-communal activity that could be interpreted by the Republic of Cyprus as granting legitimacy to the TRNC.

ENGAGE II: ACTIVE DIALOGUE NETWORKS

Findings from a case study demonstrate how our argument fits reality. Process tracing was used to determine if and how X leads to Y. We traced the process from X – the international peacebuilding actors' handling of the recognition issue – to Y – the reduction in effectiveness of the peacebuilding activity that was exposed to X. By effectiveness, we mean being able to realize the goals of these projects concerning building trust and promoting sustainable peace. We looked at the sequence: "(1) a specific event or process took place, (2) a different event or process occurred after the initial event or process, and (3) the former was a cause of the latter" (Mahoney, 2012, p. 571). From the case studies that can provide evidence for our hypothesis, we used documents and interviews with the project managers of the ENGAGE II project, a recent and important scheme which was implemented in the Turkish Cypriot community by the Management Centre of the Mediterranean, based there, and in the Greek Cypriot community by the NGO-Support Centre.

In 2012, the ENGAGE II project implemented the Active Dialogue Networks (ADNs) approach to conflict resolution in Cyprus. The main aim was to empower local authorities and local civil society organizations to become more engaged in the peace process and build confidence between the two sides. The ADN meetings were strategically designed to create an inclusive environment for different sectors, covering business representatives, academicians, rural groups and local authorities. One of the main strengths of the meetings in rural areas has been the close collaboration with the local authorities in creating strategic partnerships for implementation of the project. At these meetings, the decision on the main project was voted on by 217 people from the Turkish Cypriot Community and 162 from the Greek Cypriot Community, from six sectors of so-

ciety (civil, academia, local authorities, the private and the public sector, and the media). They were from the towns of Derynia, Pafos, Limassol, Larnaca, Yenibogazici/Ayios Epiktitos, Catalkoy/Ayios Epiktitos, Guzelyurt/Morphou and Dikmen/Dikomo. Out of 49 options, a confidence-building project covering the whole island was chosen as the main peacebuilding priority with 16% of the votes.

The project was to translate all official documents and signs on government buildings, and all road signs into Greek, Turkish and English in specific regions on the island.

Famagusta in the north of the island and part of Limassol in the south were selected for the pilot project, with the three names highlighted on the road signs. The project included historical heritage sites, thereby serving tourists as well. The expected results were to develop cooperation between local authorities, civil society and other sectors, engaging them in the peace process, promoting trust and confidence between the two sides, improving services for citizens and visitors and contributing to a more positive climate for high-level talks between the leaders of both sides.

We should emphasize here that there was far more legitimacy to this than the usual projects implemented through key stakeholder Track II meetings. It was a participatory and inclusive process that gained the support of the local authorities as well as various participants from civil society organizations. It is also noteworthy that most of these organizations were not bi-communal, meaning that they were not the usual 'suspects'.[2] Therefore, the project satisfied the conditions for moving from track II towards the much needed track III diplomacy in Cyprus (Turk, 2006).

However, the international donors opposed the project when the actions were to be realized. According to the people interviewed, the international actors argued – as they always do – that the political risks had to be weighed up before accepting and facilitating the implementation of projects, and blocked this one because the dual names on signs would not be recognized as legitimate by the Republic of Cyprus.

> "CSOs, academics and local authorities all agreed that we should do this suggesting that it is a very important confidence building measure and very important for revitalizing the peacebuilding efforts…to have them agree to it was a success in our opinion…funding was going to be from the small grants programme which we have tentatively agreed with the international donor and then at a particular stage of the project the decision was reversed. This is where our blocking and barriers came from; the actual funders but not the municipalities which we thought would be the barriers. It

was rejected because they said it was going to be too politically sensitive. The funder was presuming that changing the road signs and putting Turkish texts on the road signs as well as the Greek would imply legitimizing "north" and will upset the Greek Cypriot authorities."(Canlibalik, 2013).

> "I think that our biggest fear in the ENGAGE project has been convincing people. This time we managed to convince them. The barrier in this case was the funders…you would expect it to be the other way around. This time locals were ready but the funders were not ready…The initial argument of the international donor was that ministry of foreign affairs in both sides would not accept changing the road signs… for funding, ministry of foreign affairs in the south can stop funding from international actors… they have to be consulted at all times…the donor argued that ministry of affairs would stop funding in the case of changing the road signs" (Andriotis, 2013).

Here we see that the 'do no harm' approach of the international actors was an obstacle for the reconciliation efforts of local peacebuilding organizations, even before the Republic of Cyprus authorities made an attempt to block the project. The fear the international actors have of disturbing the balance has made them an obstacle towards peacebuilding on the island. Furthermore, it is arguable whether the translation of road signs would have had anything to do with the recognition of the Turkish Republic of Northern Cyprus. The question arises as to whether the 'do no harm' approach has actually harmed the peacebuilding process.

CONCLUSION

Over time, the value of the bottom-up approach to peacebuilding is being increasingly taken into account. However, peacebuilding literature has been limited to describing phenomena and stating the obvious fact that culture should be taken into account. It should be recognized that it is more useful to concentrate on focused hypotheses as to why and how the activities of international peacebuilding actors were so limited rather than simply suggesting that indigenous peacebuilding is superior to liberal peacebuilding. Here we have formulated a hypothesis on how the strategy for dealing with the recognition issue has created problems for the effectiveness of bottom-up peacebuilding in Cyprus. Evidence for our hypothesis is based on an important and recent case. Rather than encouraging coop-

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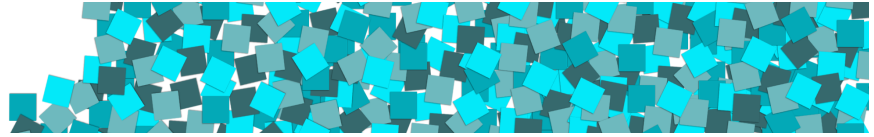2 'Usual suspects' is a name given to the small elite group engaged in bi-communal peacebuilding projects.

eration between the two communities by trying to convince the local authorities of its benefits, the international actors applied a 'do no harm' approach that strengthened the position of the ethno-nationalists who try to prevent cooperation across the Green Line. We argue that this approach shows how international peacebuilding actors can be limited in comprehending and acting on 'local' problems. They might improve their effectiveness if they thoroughly understood the root causes of conflicts before engaging in peacebuilding work, and took a more neutral and progressive stand. It is doubtful that internationally funded projects, if they are detached from the real issues in the field and have unbalanced interactions with the sides in conflict, can contribute much to the consolidation of peace in any post-conflict country.
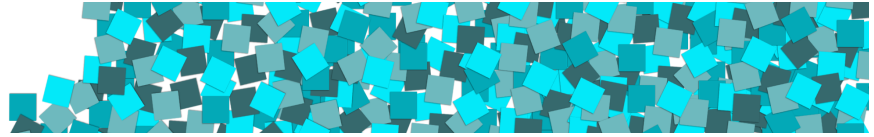
At the time of writing, the leaders of the Greek and Turkish Cypriot communities are restarting secret Track I negotiations. We have commented that this strategy, backed by the UN, is not viable since mistrust between the communities is still widespread. At the same time, Track II and Track III level diplomacy is still being conducted. Funding by international donors has eliminated some practical obstacles and led to professionalization of peacebuilding activities. However, the brief case study presented here shows that their approach may limit the possibility of any genuine cooperation between the communities, curbing the positive effects of peacebuilding work. Our opinion is that international peacebuilding actors should rethink their approach with regards to bi-communal activities if they want them to have a real effect on peacebuilding in Cyprus.

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